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No.....

Supreme Court, U.S.
FILED
JUL 10 1987
JOSEPH F. SPANIOL, JR.
CLERK

In The
Supreme Court of the United States
October Term, 1987

GARY R. HAGEBUSH,
ROY E. SCHWASINGER,
Petitioners,

vs.

FIRST NATIONAL BANK OF OMAHA,
A Nebraska Banking Corporation,
Respondent.

GARY R. HAGEBUSH,
ROY E. SCHWASINGER,
Petitioners,

vs.

NEBRASKA STATE BAR ASSOCIATION,
KAY ORR, GOVERNOR,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEBRASKA

GARY R. HAGEBUSH
ROY E. SCHWASINGER
Pro se
6904 Oak Plaza Apt. H 1
Omaha, Nebraska 68106
(402) 393-7232

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

QUESTIONS PRESENTED

1. Under Federal question jurisdiction, what court, federal or state district court, has jurisdiction over First National Bank of Omaha, alleged by counsel in the Douglas County District Court as being a Nebraska Banking Corporation and received judgment as such without complying with Nebraska Revised Statutes Sec. 8-101(4) and 8-114?

2. Are judges required to enforce both state and federal laws passed by Congress and signed by the President or passed by state legislatures and signed by the governors under Article VI (2) of the United States Constitution who by Oath alleged to do?

3. Funds were misapplied to an account not authorized to receive payment from Water Conservation Systems Co.; who is responsible for the damages?

4. A service charge was made for a wire transfer that did not take place. Is the First National Bank of Omaha responsible for the damages sustained for failure to carry out contract obligation?

5. The Governor of the State of Nebraska and the Nebraska State Bar Association alleged that the Lancaster County District Court lacked jurisdiction over them, however through counsel no evidence was submitted to the court to sustain their objection under 28 U.S.C. 1332. Does this constitute misrepresentation, fraud or negligence?

6. Can an affidavit in which a portion is crossed out still be a viable legal document?

7. Can a Plaintiff through misrepresentation obtain judgment?

8. Is the Plaintiff or counsel responsible for misrepresentation of affidavits in the courts?

9. Is the Governor of the State of Nebraska, as the chief Executive Officer, responsible for the misconduct of attorneys licensed by the state to practice law?

10. Was the Constitutional rights of Water Conservation Systems Co., Gary R. Hagebush and Roy E. Schwasinger violated by the courts for failure to order the production of records to disclose Plaintiff identity?

PARTIES INVOLVED

All Parties to the proceedings are included in the style of the case.

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No.....

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In The

Supreme Court of the United States

October Term, 1987

—o—

Water Conservation Systems Co.,
Gary R. Hagebush,
Roy E. Schwasinger,

Petitioners,

v.

First National Bank of Omaha,
A Nebraska Banking Corporation,

Nebraska State Bar Association,

Kay Orr, Governor,

Respondents.

—o—

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEBRASKA

—o—

Petitioners, Water Conservation Systems Co, Gary R. Hagebush and Roy E. Schwasinger, prays that a Writ of Certiorari issue to review the Judgment and Opinions of

the Supreme Court of Nebraska entered on June 19, 1987, and its denial of timely Motions for vacating Judgment and granting Judgment including a Motion for determination filed on the 11th day of June, 1987.

———o———

OPINIONS BELOW

The opinions of the Supreme Court of Nebraska have been reported; a true and correct copy of the opinions is set out at App. 1, 2, 3 hereto. Attached is a true and correct copy of the opinion of The Eighth Circuit Court of Appeals. See App. 4.

———o———

STATEMENT OF JURISDICTION

Jurisdiction of Supreme Court is granted under United States Constitution Article III Section 1 and 2, Section 1251 et seq. of Title 28.

This Writ of Certiorari is granted under Title 28 U.S.C. 2104.

Petitioners are filing Petition for Writ of Certiorari under U.S. Sup. Ct. Rule 46 .3 28 U.S.C..

Petitioners are filing Petition for Writ of Certiorari under Title 28 U.S.C. 2101 (b) and 2103.

Petitioners are complying with U.S. Sup. Ct. Rule 10 .3 and .6 from opinions filed in the Supreme Court of Nebraska on June 19, 1987.

Petitioners are filing a Writ of Certiorari for the determination of Federal Question Jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS AND ACTS INVOLVED

This case involves the First Article to the United States Constitution, Section 8 provides:

The Congress shall have the power

3. To regulate commerce with foreign nations, and among the several states, and with the Indian Tribes.

8. To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

The Third Article to the United States Constitution, which provides in relevant Part: Section 1.

The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, etc.

Section 2.

, and between a State, or the citizens thereof,

The Fourth Article to the United States Constitution, which provides in relevant part: Section 2.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several States.

The Sixth Article to the United States Constitution, which provides in relevant part;

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Eleventh Amendment to the United States Constitution which provides;

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

Short Title of 1978 Amendment. Section 901 of Pub. L. 90-630. Title XX 2001, Nov. 10, 1978, 92 Stat. 3728, provided that: "This title (which enacted subchapter VI of this chapter) may be cited as the "Electronic Fund Transfer Act".

This case involves the Federal Tort Claims Act.

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STATEMENT OF THE CASE

A Petition for Writ of Certiorari is requested by petitioners from opinions of the Nebraska Supreme Court involving Gary R. Hagebush, Roy E. Schwasinger and their company, Water Conservation Systems Co. filed in the Nebraska Supreme Court on the 19th day of June, 1987, as set forth by the statement of the case.

First National Bank of Omaha alleged to be in compliance with Nebraska Revised Statute Sec. 8-101 (4) and

8-114, and used the Douglas County District Court to obtain judgment, alleging that Gary R. Hagebush and Roy E. Schwasinger, through their company had borrowed money from the bank as a state chartered financial institution, however the bank through its counsel never produced the letter of termination required for the bank to become a state chartered bank pursuant to 12 U.S.C. Sec. 30 & 31. The bank alleged that Gary R. Hagebush and Roy E. Schwasinger were liable for the funds rather than Water Conservation Systems Co.. A Motion was made to dismiss the suit through their counsel. The Court had errored in accepting the case as no record of such a corporation can be found in the Office of the Secretary of State, the Nebraska State Department of Banking alleged lack of jurisdiction, and the Office of the Comptroller of the Currency alleged that the bank was a national banking association. Banks are required to be incorporated in order to do business in the state before any deposit can be made. The motion to dismiss was overruled by the judge and counsel for the defendants failed to report misconduct of the judge and attorneys as set forth in Nebraska Revised Statute Sec. 7-102 and 7-106 involving the judge and the attorneys of record.

Funds from the proceeds of the loan were to have been wire transfered to Dyckes Sprinkler Co. Ltd. account in the Bank of Montreal located in Saskatoon, Saskatchewan, Canada. No wire transfer was ever made, however a charge for the service was made and paid, a violation of the Electronic Fund Transfer Act. Merchandise has been stored since 1983 by petitioners since the payment was to have been made to Dyckes Sprinkler Co. Ltd. but was placed into the account of Dyckes Plastic Group. Payment by bank was alleged to have been made by check and

bank through counsel alleged that G. J. Dyck had sold the assets to Dyckes Plastic Group which caused the infringment of the patents as set forth under 35 U.S.C. and the warranty of the product was worthless. The Canadian Patent Office in answer to a trade complaint confirmed the ownership of the patents, etc. to be owned by Dyckes Sprinkler Co. Ltd. and the name was changed to Gerhard Holdings Ltd., the sole owner being G. J. Dyck. No record of any agreement for the sell of assets can be located in Canada and the counsel for bank has failed to supply a copy alleged by them in court to have occured including the alleged ownership of stock in Dyckes Plastic Group by G. J. Dyck which they later rescinded by alleging crossing it out. Bank and Counsel interferred with the contractual rights of petitioners since petitioners had purchased the assets from Mr. Herbert M. L. Robertson, through the purchase of one share of stock in March, 1983. Dyckes Plastic Group exspired as a business in July, 1983, after Water Conservation Systems had made the purchase.

Judge James Buckley did grant counterclaim for negligent wire transfer and later Judge Paul Hickman stated that the bank could be sued for paying an account not authorized to receive payment, however no corporation by the name of First National Bank of Omaha, A Nebraska Banking Corporation can be located and no determination by the trial courts has been made as to the identification of the alleged bank even though petitioners through motion tried to obtain the records of the bank without success.

Water Conservation Systems Co. brought suit under Nebraska Revised Statute Sec. 26 by Writ of Mandamus to have the Governor and the Nebraska State Bar Associa-

tion to show cause why the bank could use state courts to obtain judgment. Writ was never answered however defendants demurred alleging courts lack of jurisdiction, however no documents were placed in the Lancaster County District Court showing diversity of Citizenship under 28 U.S.C. 1332, and both have alleged to be residing in Lancaster County. Case was filed in the Lancaster County District Court, Lincoln, Nebraska. Damages were sought for allowing attorneys to misrepresent their clients in courts, allowing bank to operate in state not in compliance with the Nebraska Bank Act, as alleged to have been, and for the Governor to close the bank as set forth under Nebraska Revised Statute Sec. 8-114, and pay damages sustained by petitioners for interference with contractual rights, misrepresentation by attorneys licensed by the State of Nebraska. It is from these dismissals from the Nebraska Supreme Court this action is appealed from.

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STATEMENT OF FACTS

First National Bank of Omaha as a Nebraska Banking Corporation alleged in the Douglas County District Court, Omaha, Nebraska, through its counsel, that it was in compliance with the Nebraska Banking Act as a state chartered financial institution, being duly organized and existing by virtue of the banking laws of the State of Nebraska. The above statement would place them under Nebraska Revised Statute Sec. 8-101 (4) and 8-114. No record of such a corporation can be located in the Office of the Secretary of State and the Nebraska Department of Banking claims no jurisdiction over it. See App. 7 & 8. Bank alleged to

have loaned money as such and obtained judgment. Bank alleged through counsel that money was loaned to Water Conservation Systems Co. owned by Gary R. Hagebush and Roy E. Schwasinger, to purchase merchandise from Dyckes Sprinkler Co. Ltd. of Saskatoon, Saskatchewan, Canada.

On or about December 21, 1982, on the same day the note was made and proceeds of note were placed into the new account of Water Conservation Systems Co., the Bank was to have wire transferred the sum of $2,437.04 to Dyckes Sprinkler Co. Ltd. in care of Blair Conley at the Bank of Montreal. No wire transfer was ever made, however a charge was made and and the service was paid for. By failing to wire transfer the funds as demanded, the bank, had interferred with the agreement made between Continental Manufacturing and Sales Inc. alleged to have purchased assets from G. J. Dyck owner of Dyckes Sprinkler Co. Ltd., and Gary R. Hagebush and Roy E. Schwasinger. Bank later alleged through counsel that payment by check was made to Dyckes Plastic Group, alleged to have purchased assets in the summer of 1979, however Dyckes Plastic Group expired as a business on July 16, 1983. Bank also alleged that G. J. Dyck had interest through the ownership of stock in Dyckes Plastic Group but later alleged to have crossed that statement in the affidavit out on that claim. No official documents were ever placed into any court, federal or state, showing any agreement to have been in existence at any time. A trade complaint was filed through the International Trade Administration to locate the ownership of products including United States and Canadian Patents as set forth under Article 1 section 8 of the United States Constitution grant-

ing congress authority. See App. 9. The Canadian Patent Office by answer to complaint, stated that all patents were owned by Dyckes Sprinkler Co. Ltd. but the name had been changed to Gerhard Holdings Ltd. in December, 1979, owned by G. J. Dyck.

On or about September 9, 1983, the Douglas County Sheriff's Office delivered to Gary R. Hagebush and Roy E. Schwasinger a summons alleging that First National Bank of Omaha, A Nebraska Banking Corporation had filed suit on two notes alleged by that corporation to have loaned Water Conservation Systems Co. money but the suit was against Gary R. Hagebush and Roy E. Schwasinger. Defendants through Counsel, placed a motion into the Douglas County District Court to have the case dismissed. The Clerk of the Douglas County District Court and the Douglas County Sheriffs Office through negligence served summons upon defendants in which no corporation could be found as to the plaintiff. A National Bank cannot be and at the same time be a state chartered financial institution and be in compliance with 28 U.S.C. 30. The Clerk of the Douglas County District Court and Sheriff could have telephoned the Secretary of State and/or the Nebraska State Banking Department for confirmation of the legal existance of the plaintiff and should have notified the Nebraska State Bar Association that attorneys of law licensed by the State of Nebraska were filing fraudulent documents into the court and the Governor should have been notified of a bank operating as a state chartered financial institution in the Douglas County District Court without complying with Nebraska Revised Statute Sec. 8-101 (4) and 8-114. The Governor should have ordered the bank closed. The Nebraska State Bar Association

should have disciplined the attorneys through disbarment, however nothing was done. Douglas County District Court Judge James Buckley as a licensed attorney should have been aware of the misrepresentation of the bank by their counsel to the Court and should have dismissed the case and notified the Nebraska State Bar Association of the misconduct of licensed attorneys. Judge Buckley granted judgment and through the Douglas County Sheriff's Office removed Gary R. Hagebush from his residence which violated Gary R. Hagebushes rights granted under the Fourteenth Amendment to the Constitution. Judge James Buckley did make an entry into the Trial Docket dated June 26, 1984, "Ordered, that counterclaim be and the same is hereby dismissed without prejudice." See App. 11 however, no corporation can be located in the State of Nebraska. The Comptroller of the Currency alleges that the bank is a national banking association. See App. 12. A complaint was filed with the Federal Bureau of Investigation and the U.S. House of Representatives, Committee on Banking, Finance and Urban Affairs, the United States Attorneys Office failed to take legal action against bank, attorneys and judges as a licensed attorney, and licensed by the State of Nebraska. See App. 13 & 14. A demand for payment of damages was made by Defendants Counsel, but counsel for bank alleged no damages existed. See App. 15.

The Nebraska Supreme Court and the United States District Court would not take jurisdiction. The United States Eighth Circuit Court of Appeals alleged lack of jurisdiction and all have attorneys licensed by the State of Nebraska and should have reported misconduct by attorneys to the Nebraska State Bar Association which by Oath they alleged to do which is a violation of their oath and Articles III and VI of the United States Constitution.

State Courts have jurisdiction of national banking association. (Walker v. Bank of America Nat. Trust & Sav. Ass'n) Federal Courts cannot reverse or modify a state court judgment (Hana v. Home Ins. Co.) however the Nebraska Supreme Court alleged lack of jurisdiction of case but failed to vacate judgment under Nebraska Revised Statute Sec. 25-2001, and errored in not sending the case back to the Douglas County District Court in support of a motion for the production of records to determine plaintiff and force the production of the records alleged by counsel of bank to be in existence which state and federal agencies alleged did not exist, including the Government of Canada which has a trade agreement with the United States.

The Attorney General for the State of Nebraska should have prosecuted for violations of state laws and under 18 U.S.C. 656. The Governor should have ordered the bank closed for failure to comply with state law as a state chartered financial institution. The Comptroller of Currency failed to take action against the bank if it is a national banking association for false entry in bank records, and this should have been noticed by national bank examiner upon examination of the bank and that 28 U.S.C. 2403 (a) may be applicable and this writ should be served upon the Solicitor General, Department of Justice, Washington, D.C. 20530 due to the finding of courts that National bank is a national agency subject only to control of Congress. Schmitt v. Tobin (1935, D.C. Nev.) 15 F. Supp. 35, however the Douglas County District Court converted the bank by judgment and Nebraska Supreme Court has upheld the Judgment as a Nebraska Banking Corporation.

This Court should determine if the constitutional rights for due process granted under the Constitution, vio-

lated Petitioners right granted under Article III Section 2 or under Amendments under Article XI, however Petitioners have filed for claims under the Federal Tort Claim Act and were denied and under the Nebraska Administrative Claims, all claims were denied. Michael J. O'Keefe, District Counsel, Midwestern District, Comptroller of the Currency, by letter addressed questions raised, however no mention of a termination of the national bank charter has ever been placed into the courts. See App. 16.

A Writ of Mandamus was issued by the Lancaster County District Court, Lincoln, Nebraska, to have the Governor and the Nebraska State Bar Association, which is a non-profit corporation as filed in the Lancaster County Clerks Office, to show cause why the bank could use state courts without complying with state laws in obtaining judgment. No answer to the writ was made. Judge Robert Camp dismissed the case even though he was a defendant in the case by being a member of the Nebraska State Bar Association which is a conflict of interest. The case was appealed to the Nebraska Supreme Court after defendants demurred on alleged grounds that the Lancaster County District Court lacked jurisdiction over them but never offered any evidence of the fact that their principle place of business and residency was not in Lancaster County and would have been under diversity of citizenship jurisdiction. Judge Robert Camp failed to follow Nebraska Revised Statute Sec. 26, which is a violation of his Oath to enforce the laws of the State of Nebraska. A Motion was made for the Nebraska Supreme Court to determine if members of the bar could hear the case, be a defendant in the case and be counsel for the defendants. Court dismissed case without writing an opinion and dismissed the appeal to vacate

judgment and grant judgment as frivolous. These two dismissals covering the same facts are now placed before this court by Writ of Certiorari to determine jurisdiction, damages, and to vacate judgment should this court determine that the corporation that brought suit was non-existant, and a false suit had been brought against Petitioners in a state court by attorneys of law that by Oath placed fraudulent documents in the courts alleging to have a client by that name, and to determine damages suffered by Petitioners for loss of income, business, contracts, false suit, misrepresentation, mismanagement, fraud, deceit, interference with contractual rights, and failure of the courts to have the accuser identified, and having assets alleged to have been secured by a note of Bank on which no signatures were made.

The Governor by Oath alleged to have been a resident of the State when elected and by Oath alleged to enforce the laws of the State of Nebraska, however the Governor did admit to the Lancaster County District Court that she was not a resident of the state but offered no evidence as to the legal residence and should be ordered removed from office by this court for perjury or for false oath alleging when she was sworn in and became Governor she would enforce the laws of the state and uphold the Constitution of the United States.

Should this Court fail to grant Writ, Petitioners are under the opinion that the bank was properly converted to become a state chartered financial institution as stated by opinion of the Nebraska Supreme Court, and that the Comptroller of the Currency no longer has jurisdiction over said bank as a national bank and the governor of the state under Nebraska Revised Statute Sec. 8-114 is re-

quired to close bank and that national banking associations no longer need to comply with state law and that this court has approved interstate banking by lack of jurisdiction contrary to Acts of Congress.

The Nebraska Supreme Court failed to adhere to its own rulings: Foreman v. State; State v. Carrico; Woodman of the World Life Ins. Soc. v. Peter Kiewit Son's Co.; State v. Hart; Buildings Systems, Inc., v. Medical Center, Ltd.; State v. Hall. Nebraska Supreme Court errored against its own decisions and judgment should have been vacated. Nebraska Revised Statute Sec. 25-2001 gave the Supreme Court the power to reverse or modify the decision.

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REASONS FOR GRANTING WRIT

The present case raises issues as to which the Federal Constitution and decisions of this Court are controlling and which the Supreme Court of Nebraska has failed to follow. National Banking Association are deemed citizens of the state in which they are located, however attorneys for the bank alleged to the Nebraska Supreme Court that the Bank was out of the jurisdiction of that court contrary to state law and has operated as a state chartered financial institution to obtain judgment. The Nebraska State Bar Association has allowed attorneys to place into the courts allegations which they are unable to document as being factual and truthful. The governor of the State of Nebraska has allowed bank to operate in the courts of the State of Nebraska alleging to be operating by virtue of the Laws of the State of Nebraska when in fact the bank is

not incorporated, registered, chartered, licensed or complying with no state laws, and has failed to order the bank closed. Governor Kay Orr and the Nebraska State Bar Association has gone so far in the Court as to state that the court has no jurisdiction over them, however no documents have been entered into the court to provide any evidence to the contrary and have allowed a bank to operate in the State in violation of Nebraska Revised Statute Sec. 8-114. This has created interstate banking since the state alleged to have no jurisdiction over national banking association contrary to determination of this Court.

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CONCLUSION

The Petition for Writ of Certiorari should be granted and a Writ of Certiorari should issue to review opinions of the Supreme Court of Nebraska.

Respectfully Submitted,

Water Conservation Systems Co.
Gary R. Hagebush Pro Se
Roy E. Schwasinger Pro Se
6904 Oak Plaza Apt. H. 1.
Omaha, Nebraska 68106
(402) 393-7232

APPENDIX

OFFICE OF CLERK OF THE SUPREME COURT

Lincoln, NE 68509 1/23/86

IN CASE OF FIRST NATL. BANK V. HAGEBUSH, NO. 85-561 (Douglas 831-565)

The Following Orders Have Been Made:

Motion of appellee for summary dismissal sustained; see Rule 7(B)(1)*.

Respectfully, Clerk of the Supreme Court

OPINION OF THE
SUPREME COURT OF NEBRASKA

Case Title

First National Bank of Omaha, a Nebraska Banking Corporation, Appellee,

v.

Gary R. Hagebush and Roy E. Schwashinger, Appellants.

Case Caption

First Nat. Bank of Omaha v. Hagebush

Filed June 19, 1987. No. 86-1016.

Appeal from the District Court for Douglas County: Paul J. Hickman, Judge. Appeal dismissed.

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*Rule 7(B)(1)

B. Motions for Summary Dismissal or Affirmance.

(1) A motion to dismiss for lack of jurisdiction may be filed at any time after an appeal has been docketed.

Gary R. Hagebush, pro se, and Roy E. Schwasinger, pro se.

Michael A. Nelsen and Geraldine L. Clanton of Schmid, Mooney & Frederick, P.C., for appellee.

FIRST NAT. BANK OF OMAHA V. HAGEBUSH
NO. 86-1016 - filed June 19, 1987.

Krivosha, C.J., Boslaugh, White, Hastings, Caporale, Shanahan, and Grant, JJ.

PER CURIAM.

This appeal arises out of a suit brought by the plaintiff-appellee, First National Bank of Omaha, against defendants-appellants, Gary R. Hagebush and Roy E. Schwasinger, in which plaintiff secured a judgment in the district court against both of the defendants on two promissory notes. Defendants undertook an appeal of that judgment to this court, but failed to perfect the appeal steps in time. After plaintiff filed a motion for summary dismissal pursuant to Neb. Ct. R. of Prac. 7B(1) (rev. 1986), defendants voluntarily dismissed that appeal, assigning a number of legally frivolous reasons for so doing. 219 Neb. xxvii (case No. 85-156, Apr. 17, 1985).

Thereafter, defendant Hagebush filed in the district court an application to set aside the sheriff's sale and both defendants filed a motion to set aside and vacate the judgment against them. The district court overruled the application and motion, and defendants again improperly undertook an appeal to this court. We therefore sustained plaintiff's motion for summary dismissal pursuant to the provisions of rule 7B(1). 221 Neb. xxii (case No. 85-561, Jan. 23, 1986).

The present matter is before us on the recommendation of the prehearing conference officer that this purported appeal be dismissed pursuant to Neb. Ct. R. of Prac. 7A (rev. 1986), and upon the motion of the plaintiff for summary dismissal pursuant to rule 7B(1).

In this case the defendants again filed in the district court an application to set aside and vacate the judgment. The district court again overruled that application, and the defendants again undertake an appeal to this court. There exists no legally viable basis for such an appeal, and it is therefore wholly frivolous.

Accordingly, the appeal is hereby dismissed, and plaintiff is awarded the sum of $1,000 to apply toward the services of its attorneys in this court, which is taxed to the defendants as costs. *Shanks v. Johnson Abstract & Title Co., ante* p. —, — N.W.2d — (1987); *Stratman v. Hagen,* 221 Neb. 157, 376 N.W.2d 3 (1985); *Graham v. Waggener,* 219 Neb. 907, 367 N.W.2d 707 (1985); Neb. Rev. Stat. § 25-824 (Reissue 1985). All costs are taxed to the defendants.

APPEAL DISMISSED.

BEFORE THE SUPREME COURT OF NEBRASKA

Water Conservation Systems Co.,	)	No. 87-337.
	)	
Appellant,	)	
	)	ORDER.
v.	)	
	)	(Filed
Nebraska State Bar Association and Kay Orr, Governor,	)	June 19, 1987)
	)	
Appellees.	)	

This matter came on for consideration this 17th day of June 1987, upon the Court's own motion.

Our review reevals that there exists no error of law and that a detailed opinion would have no precedential value.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the district court's judgment of dismissal be, and the same hereby is, affirmed pursuant to the provisions of Neb. Ct. R. of Prac. 7A (rev. 1986).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the motions of the defendants, Nebraska State Bar Association and Kay Orr, Governor, for dismissal pursuant to Neb. Ct. R. of Prac. 7B(2) (rev. 1986), and the motion filed by plaintiff on June 12, 1987, seeking a determination of whether counsel appearing for said defendants could properly appear, each be, and each hereby is, overruled as moot.

BY THE COURT

/s/ Leslie Boslaugh
Chief Justice Pro Tempore

UNITED STATES COURT OF APPEALS
For The Eighth Circuit

No. 85-1726

Gary R. Hagebush and Roy E. Schwasinger, Appellants, v. First National Bank of Omaha, a Nebraska Banking Corporation; United States of America; and State of Nebraska, Appellees.	)	Appeal from the United States District Court for the District of Nebraska

Submitted: August 23, 1985

Filed: September 19, 1985

Before HEANEY, Circuit Judge, BRIGHT, Senior Circuit Judge, and BOWMAN, Circuit Judge.

PER CURIAM.

We have reviewed the briefs of the parties and the record below. Finding no error of fact or law, we affirm the judgment of the District Court[1] dismissing the suit for lack of jurisdiction.

[1]The Honorable Warren K. Urbom, Chief United States District Judge for the District of Nebraska.

(Flag)

STATE OF NEBRASKA

I, Allen J. Beermann, Secretary of State of the State of Nebraska do hereby certify that

there is no record of
FIRST NATIONAL BANK OF OMAHA
filed in the office of the Secretary of State.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State of Nebraska.

(SEAL)

Done at Lincoln this Eighteenth day of July in the year of our Lord, one thousand nine hundred and eighty four.

/s/ Allen J. Beermann
Secretary of State

STATE OF NEBRASKA

Robert Kerrey . Governor . Roger M. Beverage
Director

July 18, 1984

Mr. Roy Schwasinger
8308 N. 46th Street
Omaha, Nebraska 68152

Gentlemen:

You are advised that this office has no jurisdiction over The First National Bank of Omaha. We only have authority over state chartered or licensed financial institutions.

Sincerely,

/s/ Reed M. Kohl
Assistant Director

RMK/rbp

cc: Mr. Gary Hagebush
9411 Manderson
Omaha, Nebraska 68134

STATE OF NEBRASKA

Robert Kerrey . Governor . Roger M. Beverage
Director

Hand DELIVERED

December 4, 1984

Mr. Roy E. Schwasinger
8308 North 46th Street
Omaha, Nebraska 68152

Dear Mr. Schwasinger:

No record can be found in this office of the registration of First National Bank of Omaha, 16th and Dodge, Box 3128, Omaha, Nebraska 68103, as a licensee under the provisions of Article 8, Sections 8-816 and 8-819 of the Nebraska Banking Act.

Sincerely,

/s/ Reed M. Kohl
Assistant Director

RMK/rbp

ZNR UUUUU ZZH
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To Usdocdd Omaha Ne
BT
Unclas Ottawa 06677

From FCS

E.O. 12356: N/A
Tags: Bexp, Ca
Subject: Trade Complaint: Water Conservation Systems Co. vs. Dyckes Sprinkler Co. Ltd., et al

Ref: (A) Omaha 151; (B) Ottawa 6323

1. Mrs. Brazeau, Information Officer, Canadian Patent Office, referred to Ref (B), provided following information with respect to Canadian patents listed ref (A):

839,803—Appears to be incorrect number. Covers flame retardant cellulosic composition. Date of issue: April 21, 1970. Inventor—Robert McClure, transferred rights to Beaunit Corporation, New York City, N.Y.

946,358—Plastic valves. Date of issue—April 30, 1974.

921,518—Plastic hose, risers and clamping systems. Date of issue—February 20, 1973.

920,912—Stacked valve system. Date of issue—February 13, 1973.

883,191—Saddle-type tee connector. Date of issue—October 12, 1971.

967,135—Expansion plug valve. Date of issue—May 6, 1975.

According to patent office files, present owner of these patents, with exception of first one, is Dyckes Sprinkler Co. Ltd.

2. An abstract of title for each patent, that is, an official certificate outlining changes in title, if any, which have

taken place, available from Canadian Patent Office at a cost of Cdols 35 for each patent. If abstract of title required, request should be accompanied by cheque or money order in Canadian funds made out to Receiver General for Canada.

3. Request for similar information with respect to U.S. patents listed in reftel should be directed to U.S. Patent Office in Washington.
Niles
BT
#6677

Court Reporter Lola (illegible), Bailiff

The District Court of Nebraska
FOURTH JUDICIAL DISTRICT
COURT HOUSE
OMAHA, NEBR.

26 June 1984

Ms. Geraldine Clanton
1800 First National Center
Omaha, NE 68102

Ms. Edna R. Atkins
1823 Harney Street
Omaha, NE 68102

Re: First National Bank of Omaha v. Hagebush—831-565

On this date, I have made the following docket entry:

> "Demurrer of amended answer is overruled as to first affirmative defense, sustained as to the second, third, and fourth affirmative defenses. Second, third and fourth affirmative defenses are stricken. Demurrer to counterclaim is sustained. Ordered, that counterclaim be and the same is hereby dismissed without prejudice."

The first affirmative defense alleges a legitimate setoff. The counterclaim does not arise out of the loan transaction and, therefore, would have to be asserted as a separate action.

Very truly yours,

/s/ James A. Buckley
District Judge

JAB:g

Comptroller of the Currency
Administrator of National Banks

Midwestern District
911 Main Street, Suite 2616
Kansas City, Missouri 64105

November 13, 1984

Mr. Roy Schwasinger
8308 North 46th Street
Omaha, Nebraska 68152

Dear Mr. Schwasinger:

Mr. Roger Hirsch of the State of Nebraska Department of Banking has asked that our Office respond to your inquiry regarding the status of The First National Bank of Omaha, Omaha, Nebraska.

The First National Bank of Omaha was chartered as a national banking association by the Comptroller of the Currency in 1863. Its status as a national bank has been uninterrupted since that time.

The First National Bank of Omaha acquired the former David City Bank, David City, Nebraska under emergency provisions effective September 6, 1984. The Comptroller approved this transaction as well as the retention of the David City location as a branch of the acquiring bank.

We hope this information sufficiently responds to your inquiry. If you should have further questions, you may contact the undersigned at (816) 374-7141.

Sincerely,

/s/ Donelle H. Ward
National Bank Examiner
Midwestern District

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON BANKING, FINANCE AND
URBAN AFFAIRS
NINETY-EIGHTH CONGRESS
2129 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515

November 16, 1984

Mr. Roy E. Schwasinger
8308 N. 46th Street
Omaha, Nebraska 68152

Dear Mr. Schwasinger:

In response to your October 29, 1984 letter, I am transmitting a copy of a letter I recently received from the Office of the Comptroller of the Currency concerning their investigation of First National Bank of Omaha which I had initiated at your request. As soon as they have completed this investigation, I will forward their findings to you.

Sincerely,

/s/ Fernand J. St Germain
Chairman

FJStG:jOe
Enclosure

(SEAL)

U.S. Department of Justice

Federal Bureau of Investigation

Post Office Box 548
Omaha, Nebraska 68101

April 3, 1985

In Reply, Please Refer to
File No.

Mr. Roy E. Schwasinger
8308 North 46th Street
Omaha, Nebraska 68152

Dear Mr. Schwasinger:

This is in response to the complaint which you filed with our office on March 29, 1985, regarding alleged banking irregularities on the part of the First National Bank of Omaha.

We have reviewed the materials you provided at the time you made your complaint and have discussed the matter with the United States Attorney's Office for the District of Nebraska. It is our opinion that this matter does not warrant investigation by the Federal Bureau of Investigation, but is best handled as a civil matter between yourself and the bank. Therefore, this office will be taking no action regarding your complaint.

Very truly yours,

James F. Ahearn
Special Agent in Charge

By: James G. Lovelace
Supervisory Special Agent

SCHMID, FORD, MOONEY & FREDERICK,
Attorneys At Law
1800 First National Center
Sixteenth and Dodge Streets
Omaha, Nebraska 68102

Telephone
402 341-7100

April 10, 1984

Edna R. Atkins
Attorney at Law
823 Harney Street
Suite 1002
Omaha, NE 68102

Re: First National Bank of Omaha
vs. Hagebush & Schwasinger
Doc. 831 No. 565

Dear Ms. Atkins:

This is in response to your letter of April 6, 1984, in which you requested the First National Bank of Omaha to "settle on damages caused to defendants as a result of the [alleged] misapplication". After discussing the same with my client, we wish to inform you that settlement negotiations will not be discussed with the defendants as the bank intends to pursue collection for the full amount due on the promissory notes sued upon.

Sincerely yours,

/s/ Geraldine L. Clanton

GLC/pml

cc: Steve Ritzman

Comptroller of the Currency
Administrator of National Banks

Midwestern District
911 Main Street, Suite 2616
Kansas City, Missouri 64105

December 13, 1984

Mr. Roy Schwasinger
8308 North 46th Street
Omaha, Nebraska 68152

Dear Mr. Schwasinger:

You have raised a question with Corporate Analyst Donelle Ward of this Office as to whether a national bank is required to be licensed by the Nebraska Department of Banking in order to make personal loans. This matter involves your lawsuit against The First National Bank, Omaha, Nebraska.

As a general rule, state laws which expressly conflict with federal law, unduly burden the operations of the national banks, or frustrate their operations, are preempted with respect to their application to national banks. *Davis v. Elmira Savings Bank,* 161 U.S. 275 (1896); *see also, Anderson National Bank v. Luckett,* 321 U.S. 233 (1944); *Easton v. Iowa,* 188 U.S. 220 (1903).

A "license" is in the nature of a special priviledge, entitling the licensee to do something that he would not be entitled to do otherwise. Legislation purporting to imposed license restrictions or charges against instrumentalities of the federal government has frequently been declared void. 51 Am. Jur. 2d, Licenses and Permits, §§ 1-11 (1970), and the cases cited therein. Accordingly, national banks are not required to obtain state licenses to engage in activities that they, by their federal charter, are already entitled to pursue. In addition to having the power to carry on the business of banking under 12 U.S.C. § 24(7), national banks are specifically authorized to lend money. *Steward v. Atlantic National Bank of Boston,* 27 F.2d 224 (9Th Cir. 1928).

Very truly yours,

/s/ Michael J. O'Keefe
District Counsel
Midwestern District

Supreme Court, U.S.
FILED
AUG 5 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-95

In The

Supreme Court of the United States

October Term, 1987

GARY R. HAGEBUSH,
ROY E. SCHWASINGER,
Petitioners,

v.

FIRST NATIONAL BANK OF OMAHA,
A Nebraska Banking Corporation,
Respondent.

GARY R. HAGEBUSH,
ROY E. SCHWASINGER,
Petitioners,

v.

NEBRASKA STATE BAR ASSOCIATION,
KAY ORR, GOVERNOR,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEBRASKA

BRIEF IN OPPOSITION OF RESPONDENT NEBRASKA STATE BAR ASSOCIATION

ROBERT T. GRIMIT
BAYLOR, EVNEN, CURTISS,
GRIMIT & WITT
1200 American Charter Center
Lincoln, NE 68508
402/475-1075

Attorney for Respondent Nebraska State Bar Association

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

QUESTIONS PRESENTED

1. Whether Petitioners have stated a federal or constitutional question or whether their cause of action is based on state law theories of misrepresentation, fraud, and negligence.

2. Whether the Petitioners' questions presented have federal implications sufficient to invoke the jurisdiction of this Court.

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No. 87-95

In The

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October Term, 1987

GARY R. HAGEBUSH,
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v.

FIRST NATIONAL BANK OF OMAHA,
A Nebraska Banking Corporation,
Respondent.

GARY R. HAGEBUSH,
ROY E. SCHWASINGER,
Petitioners,

v.

NEBRASKA STATE BAR ASSOCIATION,
KAY ORR, GOVERNOR,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEBRASKA

BRIEF IN OPPOSITION OF RESPONDENT NEBRASKA STATE BAR ASSOCIATION

Respondent, Nebraska State Bar Association, respectfully requests this Court to deny the petition for a writ of certiorari to review the judgment of the Nebraska Supreme Court.

OPINION BELOW

The relevant opinion of the Nebraska Supreme Court appears in the appendix hereto.

STATEMENT OF JURISDICTION

The judgment of the Nebraska Supreme Court was entered on June 17, 1987 affirming the Lancaster County District Court's dismissal of Petitioners' motion for a writ of mandamus. The Petitioners did not properly raise, and the Nebraska Supreme Court did not enter judgment on, any federal question. The judgment of the Nebraska Supreme Court was based solely on Nebraska law and presents no constitutional or federal question. Therefore, the United States Supreme Court lacks jurisdiction to issue a writ of certiorari to the Nebraska Supreme Court.

———o———

CONSTITUTIONAL AND STATUTORY PROVISIONS

The decision of the Nebraska Supreme Court was based upon the law of the State of Nebraska. Therefore, no United States Constitutional provisions or federal statutes were involved in the decision.

———o———

STATEMENT OF THE CASE

The Petitioners alleged in Lancaster County District Court that the Respondent, Nebraska State Bar Association, through misrepresentation and mismanagement, allowed members of the Nebraska State Bar Association to violate the laws of the State of Nebraska and Articles I, III, and VI of the United States Constitution. The Petitioners sought a writ of mandamus to force the Nebraska

State Bar Association to produce documents relating to the alleged misconduct of attorneys licensed to practice law in the State of Nebraska. Alternatively, the Petitioner sought damages from the Nebraska State Bar Association in the amount of $596,987,000 for fraud, misrepresentation, mismanagement, interference with contractual rights, deceit and collusion.

The Lancaster County District Court sustained Respondent's demurrer and dismissed the Petitioners' action, refusing to issue the writ of mandamus, and the Petitioners appealed to the Nebraska Supreme Court. In the Nebraska Supreme Court, the Petitioners alleged the same claims against the Nebraska State Bar Association. The Petitioners also referred generally to Articles I, III, and VI of the United States Constitution. The Nebraska Supreme Court affirmed the dismissal of the Petitioners' action in the Lancaster County District Court without a published opinion. The Petitioners failed to assert any specific claim of violations of their federal or constitutional rights and no federal or constitutional questions were decided by the Nebraska Supreme Court.

SUMMARY OF THE ARGUMENT

The Petitioners are required to show that a constitutional or federal question was decided by the Nebraska Supreme Court. The Petitioners have failed to show the presence of a constitutional or federal question and the petition for a writ of certiorari should be denied.

The Petitioners have failed to sufficiently state the questions they are presenting to this Court. The Petitioners' questions presented are too indefinite to invoke this Court's jurisdiction.

The decision of the Nebraska Supreme Court was based upon the law of the State of Nebraska. The Nebraska Supreme Court did not refer in any way to a constitutional or federal question. In the absence of any showing by the Petitioners that the decision of the Nebraska Supreme Court could not be based upon the law of the State of Nebraska, this Court should not review that decision.

REASONS TO DENY THE PETITION

I. THE PETITIONERS HAVE FAILED TO PROPERLY PRESENT A FEDERAL QUESTION SUFFICIENT TO INVOKE THE JURISDICTION OF THIS COURT.

The judgment of the Nebraska Supreme Court did not involve a constitutional or federal question. If a federal question was presented to the Nebraska Supreme Court, the court did not pass judgment on that question. There was no reference to a federal right or question in the opinion of the Nebraska Supreme Court. "[W]hen, as here, the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." *Street v. New York,* 394 U.S. 576, 582 (1969) (citation omitted).

The Nebraska Supreme Court did not decide a constitutional or federal question in affirming the dismissal

of the Petitioners' cause of action. The lack of reference to a constitutional or federal question leads to the assumption that such an issue was not properly raised. The Petitioners failed to properly raise a constitutional or federal question. The Petitioners cannot raise, in this Court or in the Nebraska Supreme Court, an issue that was not decided in the trial court.

The Petitioners in the present case did not raise a federal or constitutional issue involving the Nebraska State Bar Association in the Lancaster County District Court. The Petitioners' allegations in the district court were based on state law. In their brief to the Nebraska Supreme Court, the Petitioners alleged that the Nebraska State Bar Association interfered with their constitutional rights by interfering with their right to contract. The Petitioners referred generally to Articles I, III, and VI of the United States Constitution. The Petitioners, however, did not specifically indicate how their constitutional rights were infringed. It is well-stated rule of law in Nebraska that issues not raised in the lower court cannot be considered on appeal. "We will not consider [appellant's] contention for the first time here. Issues not properly raised in the pleadings nor litigated at trial will not generally be considered for the first time on appeal." *Armstrong v. Hartford Life Ins. Co., Inc.,* 219 Neb. 128, 131, 361 N.W.2d 511, 513 (1985).

The Supreme Court has no power to rule on an issue that was not properly raised in the highest state court. To determine the propriety of this Court's jurisdiction, the Court "must inquire whether that question was presented to the [state] courts in such a manner that it was neces-

sarily decided by the [state court]." *Street,* 394 U.S. at 581. The Supreme Court may review the final decision of the highest state court only if the aggrieved party is "denied some title, right, privilege, or immunity . . . [and] it appear[s] from the record that such title, right, privilege, or immunity was 'specially set up or claimed' in the state court as belonging to such party under the constitution, or some treaty, statute, commission or authority of the United States." *Oxley Stave Co. v. Butler County,* 166 U.S. 648, 653 (1897). The Petitioners have failed to adequately claim they were denied a federal right and the record does not disclose such a denial. "This statutory requirement [that a constitutional or federal right was violated] is not met if such declaration is so general in its character that the purpose of the party to assert a Federal right is left to mere inference." *Oxley,* 166 U.S. at 655. The Petitioners have generally mentioned Articles I, III, and VI of the United States Constitution, but have not specifically alleged how their rights were violated. The claim of the Petitioners must be "so distinct and positive as to place it beyond question" that a federal right was asserted. *Oxley,* 166 U.S. at 655.

The fact that the Petitioners alleged a violation of their federal or constitutional rights is not sufficient. The federal question must be presented in the proper manner to the highest state court and it must appear that judgment was passed on the federal question. *Harding v. Illinois,* 196 U.S. 78, 86 (1904). A "vague objection" referring to the United States Constitution is not sufficient without any argument or authority in support of the objection. *Harding,* 196 U.S. at 88. "Errors assigned but not noticed or relied on in the brief or argument of coun-

sel, will be regarded as waived or abandoned." *Hulbert v. Chicago,* 202 U.S. 275, 277 (1906) (citations omitted). If Petitioners do not cite any authority or present any arguments to support their propositions, there must be evidence in the record to support claims that the state court decision involved a right claimed under the United States Constitution.

II. THE QUESTIONS PRESENTED BY THE PETITIONERS ARE TOO INDEFINITE AND GENERAL TO RAISE FEDERAL ISSUES BEFORE THIS COURT.

The questions presented by the Petitioners are very ambiguous. The Petitioners do not state how their federal rights were infringed by the Nebraska State Bar Association. The United States Supreme Court held in *Oliphant v. Brotherhood of Locomotive Firemen and Engineermen,* 359 U.S. 935 (1959) cert. denied, reh'g denied, 359 U.S. 962, that "[i]n view of the abstract context in which the questions sought to be raised are presented by this record, the petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit is denied."

The Court limits considerations to "questions specifically brought forward by the petition." *General Taking Pictures Corp. v. Western Electric Co., Inc.,* 304 U.S. 175, 177 (1938). The Petitioners in the case at hand have failed to sufficiently bring forward a question for this Court to consider. The Petitioners' questions presented do not clearly and unambiguously state questions which may be considered by this Court.

III. THE DECISION BELOW WAS BASED ON STATE, NOT FEDERAL, LAW. THEREFORE, THIS COURT LACKS JURISDICTION TO GRANT THE WRIT OF CERTIORARI.

"Where the highest court of the state delivers no opinion and it appears that the judgment might have rested upon a nonfederal ground, this Court will not take jurisdiction to review the judgment." *Strembridge v. Georgia,* 343 U.S. 541, 547 (1952). The Petitioners' allegations against the Nebraska State Bar Association are based on state law and it does appear that the judgment of the state court was based on state law. Therefore, the United States Supreme Court should not grant a writ of certiorari to review the decision of the Nebraska Supreme Court.

———o———

CONCLUSION

For each of the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

ROBERT T. GRIMIT
BAYLOR, EVNEN, CURTISS,
GRIMIT & WITT
1200 American Charter Center
Lincoln, NE 68508
402/475-1075

Attorney for Respondent
Nebraska State Bar
Association

APPENDIX

BEFORE THE SUPREME COURT OF NEBRASKA

Water Conservation Systems Co.,	)	
	)	
Appellant,	)	
	)	No. 87-337
v.	)	ORDER.
	)	
Nebraska State Bar Association and Kay Orr, Governor,	)	(Filed June 19, 1987)
	)	
Appellees.	)	

This matter came on for consideration this 17th day of June 1987, upon the Court's own motion.

Our review reveals that there exists no error of law and that a detailed opinion would have no precedential value.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the district court's judgment of dismissal be, and the same hereby is, affirmed pursuant to the provisions of Neb. Ct. R. of Prac. 7A (rev. 1986).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the motions of the defendants, Nebraska State Bar Association and Kay Orr, Governor, for dismissal pursuant to Neb. Ct. R. of Prac. 7B(2) (rev. 1986), and the motion filed by plaintiff on June 12, 1987, seeking a determination of whether counsel appearing for said defendants could properly appear, each be, and each hereby is, overruled as moot.

BY THE COURT

/s/ Leslie Boslaugh
Chief Justice Pro Tempore

Supreme Court, U.S.
FILED
AUG 7 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-95

In The

Supreme Court of the United States

October Term, 1987

WATER CONSERVATION SYSTEMS CO.,
GARY R. HAGEBUSH,
ROY E. SCHWASINGER,

Petitioner,

v.

FIRST NATIONAL BANK OF OMAHA,
NEBRASKA STATE BAR ASSOCIATION,
KAY ORR, GOVERNOR OF NEBRASKA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEBRASKA SUPREME COURT

BRIEF OF RESPONDENT KAY ORR IN OPPOSITION

KAY ORR, Governor,
State of Nebraska

ROBERT M. SPIRE
Attorney General

LEROY W. SIEVERS*
Assistant Attorney General
2115 State Capitol
Lincoln, NE 68509
Tel: (402) 471-2682

**Counsel of Record*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

QUESTION PRESENTED

The sole question which could properly be raised from the record below is whether or not, as a matter of state law pleading and practice, the Supreme Court of Nebraska properly affirmed the lower court's dismissal.

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1. Neither the decision below nor the record raises the questions presented in the petition. 5

2. There is no federal question before this court sufficient to invoke its jurisdiction. 6

3. Even if the questions presented in the petition were proper they still do not raise a federal question sufficient for this court to invoke its jurisdiction. 7

4. Respondent, Governor Orr, has no authority over First National, thus the writ of mandamus was properly dismissed. 8

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No. 87-95

In The

Supreme Court of the United States

October Term, 1987

WATER CONSERVATION SYSTEMS CO.,
GARY R. HAGEBUSH,
ROY E. SCHWASINGER,

Petitioner,

v.

FIRST NATIONAL BANK OF OMAHA,
NEBRASKA STATE BAR ASSOCIATION,
KAY ORR, GOVERNOR OF NEBRASKA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEBRASKA SUPREME COURT

BRIEF OF RESPONDENT KAY ORR IN OPPOSITION

The respondent Kay Orr, Governor of Nebraska, respectfully requests that this court deny the Petition for Writ of Certiorari, seeking review of the dismissal of this case by the Supreme Court of Nebraska.

OPINION BELOW

The relevant opinion of the Supreme Court of Nebraska appears in the appendix hereto.

STATEMENT OF JURISDICTION

The judgment of the Supreme Court of Nebraska was entered on June 17, 1987, affirming the Lancaster County District Court's dismissal of petitioners' motion for a writ of mandamus. The petitioners did not properly raise, and the Supreme Court of Nebraska did not enter judgment on, any federal question. The judgment of the Supreme Court of Nebraska was based solely on Nebraska law and presents no constitutional or federal question. Therefore, this court lacks jurisdiction to issue a writ of certiorari to the Nebraska Supreme Court.

———o———

STATUTES OR CONSTITUTIONAL PROVISIONS

The decision of the Supreme Court of Nebraska was based upon the law of the State of Nebraska. Therefore, no United States Constitutional provisions or federal statutes were involved in the decision.

———o———

STATEMENT OF THE CASE

Petitioners defaulted on two bank notes, one for $10,000 and one for $1,500, issued by the First National Bank of Omaha ("First National"). First National sued the petitioners, Gary R. Hagebush and Roy E. Schwasinger, to recover on the defaulted notes and prevailed. In its complaint First National inadvertently alleged that it was a "Nebraska Banking Corporation", organized under the

laws of Nebraska, when in fact it is a National Banking Association organized under laws enacted by the U.S. Congress.

Grasping upon that mistake, the petitioners brought a tort action in federal court against First National, the United States and several federal agencies, making numerous claims, most arising from that mistake. *See, Hagebush v. United States,* 657 F.Supp. 675 (D.Neb. 1986). The court dismissed the claims against the United States and the named federal agencies because they were exempt under the Federal Tort Claim Act and then dismissed the claims against First National for lack of diversity and failure to state a claim.

After the dismissal of their federal court case, the petitioners instigated this action in state court. Petitioners sought a writ of mandamus against respondent, Governor Orr, and the Nebraska State Bar Association. In the Petition for the Writ of Mandamus, the petitioners requested that the court order Governor Orr to: (1) close First National for being in violation of Nebraska banking laws; (2) force First National to supply petitioners with certain documents (First National's Nebraska Corporation Registration); and (3) pay $15,000,000 in damages. Petitioners also sought an order from the court requiring that the Nebraska State Bar Association: (1) discipline First National's attorneys for filing false documents in courts, (2) provide certain documents to petitioners; (3) have all of the Nebraska State Bar Association members' licenses declared invalid; (4) have all attorneys of record surrender their licenses to the Sheriff of the county in which they reside, and (5) pay $596,987,000 in damages. Both defendants demurred to the writ and the District

Court of Lancaster County sustained the demurrers and dismissed the action with prejudice.

The petitioners then appealed the dismissal to the Supreme Court of Nebraska. Following the recommendation of the pretrial conference officer, the Supreme Court of Nebraska summarily affirmed the lower court's dismissal pursuant to Neb.Ct.R. of Prac. 7A(4) (Revised 1986) which states:

> 7A. Summary disposition of any case by the Supreme Court on the court's motion (parties may not request disposition under this section of this rule).
>
> When the court determines that...
>
> (4) No error of law appears; and the court also determines that a detailed opinion would have no precedential value, the judgment or order will be affirmed in the following manner: AFFIRMED. See Rule 7A.

The petitioners then filed a petition for writ of certiorari with this court. It should be noted that in the writ, petitioners named Governor Orr, the Nebraska State Bar Association and First National as respondents. However, First National was not a party to that action below. Possibly, petitioners are attempting to include in this petition for writ of certiorari, claims from either their loss in *First Nat. Bank of Omaha v. Hagebush* (Case No. 85-561, Pet.App.1), 225 Neb. 711, 407 N.W.2d 787 (1987), or the dismissal of *Hagebush v. First Nat. Bank of Omaha et al.*, Docketed as CV85-O-96 (Dist. of Neb.) which was affirmed by the Eighth Circuit Court of Appeals (Case No. 85-1726, Pet.App.5) in an unpublished decision on September 9, 1985.

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REASONS WHY THE PETITION SHOULD BE DENIED

1. Neither the decision below nor the record raises the questions presented in the petition.

The only question which was decided by the Supreme Court of Nebraska and therefore the only question that can be properly raised in the Petition for Writ of Certiorari is whether or not the Supreme Court of Nebraska properly affirmed the order of the District Court of Lancaster County, Nebraska, dismissing the action below. In *Tyrrell v. District of Columbia,* 243 U.S. 1 (1917) this court stated, "When . . . we discover that the question upon which the certiorari was prayed under the circumstances previously stated does not arise on the record [it] is not open for consideration, and therefore the Petition for Certiorari [is] rested upon a wholly unsubstantial and nonexisting ground." *Id.* at 243.

This court in *Tyrrell* dismissed the writ because petitioner did not make an exception in the lower court to the question it raised in their Writ of Certiorari and therefore it did not properly arise in the record and could not be considered. In the case at bar, however, due to the lower court's sustaining of defendant's demurrers, there is absolutely nothing in the record which speaks to the questions as presented by the petitioners. Thus, the petition must fail because it is "rested upon wholly unsubstantial and nonexisting grounds."

Furthermore, in a line of cases, this court has held that normally when there is no lower court opinion on the legal issue(s) raised in the petition it will decline to consider the claim. *National Labor Relations Board v. Sears, Roe-*

buck & Co., 421 U.S. 132, 164, 95 S.Ct. 1504, 1523, 44 L.Ed. 2d 29, 55 (1975); *Ramsey v. Mine Workers*, 401 U.S. 302, 91 S.Ct. 658, 28 L.Ed.2d 64 (1971); *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970). Since the lower court dismissed on demurrer and the Nebraska Supreme Court affirmed pursuant to Neb.Ct.R. of Prac. 7A(4) (Revised 1986), there exists no opinion on anything, let alone the questions asserted by the petitioners. While it is not contended that a State Supreme Court can escape this court's review by merely refusing to write an opinion, the lack of opinion does tend to establish the frivolousness of petitioners' claims and that the only question capable of properly being before this court, is the one presented in this response brief.

2. There is no federal question before this court sufficient to invoke its jurisdiction.

This court has held that in order for it to invoke jurisdiction under Sup.Ct.R. 17, "There must be a real substantive question on which the case may be made to turn, that is, a real, and not merely a formal, federal question is *essential* to the jurisdiction of this court." *Equitable Life Assurance Society v. Brown*, 187 U.S. 308, 311, 23 S.Ct. 123, 124, 47 L.Ed. 190, 192 (1902) (emphasis added). However, if as stated earlier, the only question that can be presented to this court is whether or not the affirmation of the dismissal was proper, then there is clearly no federal question presentable to this court. The question as stated is solely a question of state court pleading and practice and therefore it is not sufficient to invoke the jurisdiction of this court.

Furthermore, in *Bowe v. Scott*, 233 U.S. 658 (1914) this court stated:

> [I]t is elementary that a mere assertion in a state court of a right under the Constitution of the United States in a petition for rehearing affords no ground for invoking the jurisdiction of this court unless the court below, in dealing with the petition for rehearing, considers and passes upon the Federal ground therein relied upon, we dismiss that subject from view and come to consider whether the record otherwise discloses that a Federal question was so raised below as to support our jurisdiction.
>
> *Id.* at 233 U.S. 663, 34 S.Ct. 771, 58 L.Ed. 1144.

Just as the court in *Bowe* did not pass upon the federal grounds alleged in the petition for rehearing, the Supreme Court of Nebraska, due to the sustaining of the demurrers, did not have the opportunity to rule upon any federal question.

3. Even if the questions presented in the petition were proper they still do not raise a federal question sufficient for this court to invoke its jurisdiction.

This action, in neither form nor substance, was an action under federal law or the Constitution of the United States. Even though in their petition for writ of certiorari, petitioners allude to a due process violation, this is the first time they have ever mentioned such a claim. This court has stated, "[T]he jurisdiction of this court to re-examine the final judgment of a state court cannot arise from mere inference, but only from averments so distinct and positive as to place it beyond question that the party bringing a case here from such court intended to assert a federal right." *Oxley Stave Co. v. Butler County,* 166 U.S. 648, 655 (1897). However, upon reading the petition for writ of certiorari, it is difficult, if not impossible, to

ascertain how exactly petitioners' right to due process or any other constitutional right was allegedly violated. The action below was a proceeding in mandamus merely alleging that Governor Orr and the Nebraska State Bar Association failed to act against First National or the attorneys who made the inadvertent allegation; it did not involve any claims of a constitutional nature. This court, therefore, does not have jurisdiction to review the decision below.

4. Respondent, Governor Orr, has no authority over First National, thus the writ of mandamus was properly dismissed.

Aside from the impropriety of the questions as presented and the lack of jurisdiction, it is evident upon the facts that the dismissal was proper. In general, mandamus requires the establishment of three elements: (1) plaintiff has a clear right to the relief sought; (2) the defendant has a clear duty to do the act in question, and (3) no other adequate remedy is available. Neb.Rev.Stat. §§ 25-2156 to 25-2159 (Reissue 1985); *Archbishop Bergan Mercy Hosp. v. Heckler,* 614 F.Supp. 1271, 1275 (D.Neb. 1985); *Jeno's, Inc. v. Commissioner of Patents and Trademarks,* 498 F.Supp. 472, 476 (D.Minn. 1980); *Yaar v. Resor,* 339 F.Supp. 964, 967 (E.D.N.C. 1972). However, not only is there no "clear duty" in this case, there is no duty whatsoever. First National was chartered as a national banking association in 1863 and as such is under the control of the comptroller of currency. Its status as a national bank has continued uninterrupted since that time (Pet.App.12). In regard to national banks this court has stated:

> National banks are brought into existence under federal legislation, are instrumentalities of the federal government and are necessarily subject to the paramount authority of the United States. Nevertheless, national banks are subject to the laws of a state in respect of their affairs unless such laws interfere with the purposes of their creation, tend to impair or destroy their efficiency as federal agencies or conflict with the paramount law of the United States.

First National Bank v. Missouri, 263 U.S. 640, 656, 44 S.Ct. 213, 215, 68 L.Ed. 486, 492 (1923).

Certainly allowing respondent, Governor Orr, the authority to close a national bank would "interfere" with its purpose, "impair or destroy" its "efficiency", and "conflict with the paramount law of the United States."

The Governor clearly does not have the authority, let alone the duty, to close First National. Furthermore, it is the respondent's opinion that the plaintiff does not have a "clear right" to the relief sought and there may exist a more adequate remedy than mandamus. However, in order to remain brief and because the mandamus action fails for a lack of duty, the issues of clear right and adequate remedy will not be discussed.

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CONCLUSION

Because the writ of mandamus was originally dismissed on demurrer, there is no evidence in the record which speaks to the questions as presented by the petitioner and therefore they are not properly before this court. The only question which could be properly raised from the

record is whether or not the affirmation of the dismissal was proper. That question, however, is merely a question of state pleading and practice and, is not sufficient to invoke the jurisdiction of this court. Furthermore, even if the questions as presented by the petitioners were proper, they fail to raise a sufficient federal question necessary for this court to invoke its jurisdiction. Finally, it is apparent from the facts that the original action in mandamus was properly dismissed because the respondent, Governor Orr, clearly has no duty to perform the acts requested. For these reasons, respondent respectfully requests the petition for writ of certiorari be denied.

Respectfully submitted,

KAY ORR, Governor,
State of Nebraska, Respondent

By ROBERT M. SPIRE
Attorney General

By LEROY W. SIEVERS*
Assistant Attorney General
2115 State Capitol
Lincoln, NE 68509
Tel: (402) 471-2682

**Counsel of Record*

APPENDIX

BEFORE THE SUPREME COURT OF NEBRASKA

Water Conservation Systems Co.,	)	
	)	No. 87-337.
Appellant,	)	
	)	ORDER
v.	)	
	)	(Filed June 19,
Nebraska State Bar Association and Kay Orr, Governor,	)	1987)
	)	
	)	
Appellees.	)	

This matter came on for consideration this 17th day of June 1987, upon the Court's own motion.

Our review reveals that there exists no error of law and that a detailed opinion would have no precedential value.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the district court's judgment of dismissal be, and the same hereby is, affirmed pursuant to the provisions of Neb. Ct. R. of Prac. 7A(rev. 1986).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the motions of the defendants, Nebraska State Bar Association and Kay Orr, Governor, for dismissal pursuant to Neb. Ct. R. of Prac. 7B(2) (rev. 1986), and the motion filed by plaintiff on June 12, 1987, seeking a determination of whether counsel appearing for said defendants could properly appear, each be, and each hereby is, overruled as moot.

BY THE COURT

/s/ Leslie Boslaugh
Chief Justice Pro Tempore

Supreme Court, U.S.
FILED
AUG 13 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-95

In The

Supreme Court of the United States

October Term, 1987

GARY R. HAGEBUSH,
ROY E. SCHWASINGER,
Petitioners,

vs.

FIRST NATIONAL BANK OF OMAHA,
A Nebraska Banking Corporation,
Respondent.

GARY R. HAGEBUSH,
ROY E. SCHWASINGER,
Petitioners,

vs.

NEBRASKA STATE BAR ASSOCIATION,
KAY ORR, GOVERNOR,
Respondents.

ON APPEAL FROM THE SUPREME COURT OF NEBRASKA

BRIEF OF RESPONDENT FIRST NATIONAL BANK OF OMAHA IN OPPOSITION

Prepared and Submitted By:
GERALDINE L. CLANTON

For: SCHMID, MOONEY & FREDERICK, P.C.
1800 First National Center
Omaha, Nebraska 68102
(402) 341-7100

Attorneys for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

QUESTIONS PRESENTED

Because Petitioners failed to perfect their appeal of the original Summary Judgment entered by the District Court of Douglas County, Nebraska, to the Supreme Court of Nebraska, The United States Supreme Court does not have jurisdiction to hear this appeal, and the appeal should be dismissed. Additionally, there is no federal question involved in this litigation, and no federal question was ever passed upon by a lower court.

PARTIES INVOLVED

The parties involved in this proceeding are Respondent-Appellee, First National Bank of Omaha, and Petitioners, Gary R. Hagebush and Roy E. Schwasinger. (Petitioners have apparently also consolidated this appeal with their appeal of *Hagebush and Schwasinger v. Nebraska State Bar Association and Kay Orr, Governor*).

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OPINIONS BELOW

Opinions of the District Court of Douglas County, Nebraska, and the Supreme Court of Nebraska.

———o———

STATEMENT OF JURISDICTION

Respondent-Appellee does not believe that the United States Supreme Court has proper jurisdiction for this appeal, and further, there is no federal question involved in this litigation.

———o———

STATEMENT OF THE CASE

This matter grows out of what was a very simple lawsuit filed in the District Court of Douglas County, Nebraska. In September of 1983, the First National Bank of Omaha (hereinafter referred to as "Bank") sued Hagebush and Schwasinger, Petitioners herein, on notes totaling $11,500.00. Petitioners, complaining that the Bank allegedly mistransferred a wire transfer of $2,452.04 to the wrong bank account in Canada, countersued the Bank for more than $53,000,000.00 in damages. Nebraska District Court Judge, James A. Buckley, dismissed the counterclaim.

It might be helpful at this point to note briefly the purpose of the wire transfer. In December 1982, Peti-

tioners had apparently asked the Bank to wire the sum of $2,452.04 to the account of Dyckes Sprinkler Co. at the Bank of Montreal to pay for some goods they had ordered for their company, Water Conservation Systems Co. When the Bank of Montreal received those funds, the Bank of Montreal credited the funds to the account of Dyckes Plastic Group because the owner of Dyckes Sprinkler Co. had authorized them to do so.

Judge Buckley determined that even though the Bank of Montreal credited the account of Dyckes Plastic Group rather than Dyckes Sprinkler Co., the goods were purchased from Dyckes Plastic Group. The goods had been paid for, and Mr. Schwasinger had actually picked up the goods himself. District Court Judge Buckley was satisfied that a mistransfer of funds had not occurred, and summary judgment was entered against Hagebush and Schwasinger on October 19, 1984.

Hagebush and Schwasinger failed to file a motion for new trial within ten (10) days of October 19, 1984, and *likewise failed to file a notice of appeal within thirty (30) days of October 19, 1984, as required by Nebraska Law.* Neb. Rev. Stat. § 25-1912 (Reissue 1984). Long after that time, Hagebush and Schwasinger filed a Motion to Set Aside and Vacate the Summary Judgment which was denied. This prompted the *first* appeal to the Nebraska Supreme Court in this matter.

Judge Harry A. Spencer, conference officer for the Nebraska Supreme Court, filed a conference report on March 18, 1985, and characterized this *first* appeal as frivolous and recommended dismissal. Judge Spencer also noted in his report that counsel for Hagebush and Sch-

wasinger conceded at the preconference hearing that his clients owed the money on the note. Judge Spencer also stated that he found no fraud or irregularity sufficient to bring this case within the ambit of *Neb. Rev. Stat.* § 25-2001 (Reissue 1979). Hagebush and Schwasinger subsequently dismissed their appeal.

Hagebush and Schwasinger later filed a *second* Motion to Vacate and Set Aside the Summary Judgment of October 19, 1984. That motion basically reiterated the same grounds as the *first* motion. Hagebush and Schwasinger complained that the Bank committed an enormity by showing in the caption of the case that it was a Nebraska Banking Corporation rather than a National Banking Corporation. This, of course, was simply a typographical error.

The law firm for the Bank represents many banks, most of which are Nebraska State Banks. The caption which includes a "Nebraska Banking Corportion" is simply a normal, standard heading. There was no question that Hagebush and Schwasinger knew that they were being sued by the institution to which they had given the notes, that the notes were due, and that the First National Bank of Omaha was still the owner and holder of the notes. Nevertheless, Hagebush and Schwasinger contined to allege that this inadvertent error or "irregularity" was sufficient to set aside the judgment.

In addition, Hagebush and Schwasinger alleged that the Bank used "fraudulent" affidavits to obtain the summary judgment. Prior to judgment being entered the Bank had submitted an affidavit of G. J. Dyckes. The statement that G. J. Dyckes was a shareholder in Dyckes

Plastic Group had been crossed out and initialed by G. J. Dycke. Regardless, Hagebush and Schwasinger alleged in their *second* Motion to Vacate the Judgment that the Bank had committed fraud because G. J. Dyckes was *not* a shareholder in Dyckes Plastic Group.

Apparently, Hagebush and Schwasinger proceeded on the theory that they did not know that this statement had been crossed out in the original affidavit; hence, they could not effectively argue their case. They failed to mention, however, that their counsel had an opportunity to examine the original affidavit at the summary judgment hearing and, again, when he had the Bill of Exceptions prepared for their *first* appeal. When he discovered that this allegation against the Bank was unfounded, he claimed that his copy of the affidavit was so light that the line drawn through that statement was not visible.

G. J. Dycke's affidavit was submitted to the trial court to explain to the Court why the Bank of Montreal apparently credited the wire transfer to the account of Dyckes Plastic Group rather than to the account of Dyckes Sprinkler Co. The fact that G. J. Dyckes was or was not a shareholder of Dyckes Plastic Group was irrelevant and immaterial to this action.

Hagebush and Schwasinger also alleged that they found some sort of discrepancy in the affidavit of Vance Peters. Vance Peters stated in his affidavit that he was the General Manager of Dyckes Plastic Group, but as Hagebush and Schwasinger pointed out, some of the invoices attached to his affidavit were from Dyckes Sprinkler Co., Ltd., rather than ~~Dyckes~~ Plastic Group. Hagebush and Schwasinger failed to mention that several letters

also attached to that same affidavit addressed Mr. Peters as the General Manager of Dyckes Plastic Group. In fact, some of those letters are from Roy Schwasinger to Vance Peters as "General Manager" of Dyckes Plastic Group.

Again, petitioners' *second* appeal was summarily dismissed by the Supreme Court of Nebraska. Thereafter, petitioners filed another Application to Set Aside and Vacate the Judgment in the District Court. The District Court overruled that Application, and the petitioners again undertook their *third* appeal to the Supreme Court of Nebraska. The Supreme Court held that there was no legally viable basis for such an appeal and the appeal was wholly frivolous. The *third* appeal was dismissed, and respondent was awarded the sum of $1,000.00 in attorney fees. In addition, all costs were taxed to the petitioners.

The latest ruling from the Nebraska Supreme Court has now been appealed to the United States Supreme Court. Petitioners are now alleging that there is a federal question involved in this litigation. We must emphasize, however, that there is no federal question, and no federal question was ever expressly passed upon by any court below. After the District Court of Douglas County, Nebraska, entered Summary Judgment on behalf of respondent, petitioners simply failed to comply with the most fundamental requirements of perfecting an appeal to the Supreme Court of Nebraska. *See, Neb. Rev. Stat.* § 25-1142, § 25-1143, § 25-1911, and § 25-1912. We contend that this Court has no jurisdiction of this appeal, the appeal itself is infirm, and the appeal should be dismissed.

In addition to the litigation mentioned above, it should also be noted that Hagebush and Schwasinger filed a similar action against the Bank, The United States of America and the State of Nebraska in the United States District Court for the District of Nebraska (CV-85-0-96). Each of the defendants filed a separate motion to dismiss based on jurisdictional grounds. Chief Judge Warren Urbom dismissed the complaint, and Hagebush and Schwasinger appealed to the 8th Circuit Court of Appeals. That appeal was also dismissed. (85-1726 NE).

Thereafter, Hagebush and Schwasinger brought another similar action in Federal Court against the United States of America, First National Bank of Omaha, Comptroller of the Currency, Internal Revenue Service, United States Department of Justice, Federal Bureau of Investigation, and the United States Attorney for the District of Nebraska. (CV-0-192). That case was also dismissed by the United States District Court Judge Lyle Strom. A lawsuit was later filed in the District Court of Douglas County, Nebraska, by Hagebush and Schwasinger against Judge Strom personally as a result of that action. (Doc. 855, Page 319). That case was dismissed on October 2, 1986.

It also appears that Hagebush and Schwasinger have filed an action against the Nebraska State Bar Association and the Governor of Nebraska, Kay Orr. Apparently, the Supreme Court of Nebraska ruled against Hagebush and Schwasinger in that action, and petitioners have appealed that ruling to this Court also.

This recitation hopefully will give the Court some of the flavor of these proceedings. The claims of Hage-

bush and Schwasinger have been knocked down at every juncture in both State and Federal Courts. Petitioners, seemingly out of frustration that their prior actions had failed, have now filed an appeal to the Supreme Court of the United States. We believe that this appeal is wasteful of the Court's time and the litigants' time.

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STATEMENT OF FACTS

The Bank respectfully requests that the Statement of the Case also serve as the statement of facts.

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SUMMARY OF ARGUMENT

A party which has secured a judgment is entitled to retain that judgment, and it may not be set aside in the absence of a sound legal reason for doing so. Only when a judgment is clearly shown to have been obtained by fraud or false testimony and when it would be against good conscience to enforce judgment and proper showing of due diligence is made will a judgment be vacated after the term in which it was rendered.

Aetna Cas. & Sur. Co. v. Dickinson, 216 Neb. 660, 345 N.W. 2d 9 (1984)

Emry v. American Honda Motor Co., 214 Neb. 435, 334 N.W.2d 786, 792 (1983)

Lincoln County v. Provident Loan & Investment Co., 147 Neb. 169, 22 N.W.2d 609 (1946)

Miller Chemical Co., Inc. v. Tams, 211 Neb. 837, 320 N.W. 2d 759 (1982)

Sargent Feed & Grain Co. v. Anderson, 216 Neb. 421, 344 N.W.2d 59 (1984)

State ex rel. Birdine v. Fuller, 216 Neb. 86, 341 N.W.2d 613 (1983)

There is no justification whatsoever for vacating the Summary Judgment entered against Hagebush and Schwashinger. The Judgment was entered on October 19, 1984. Hagebush and Schwasinger failed to file a Notice of Appeal with the Supreme Court of Nebraska within thirty (30) days of October 19, 1984 as required by Nebraska Law. *Neb. Rev. Stat.* § 25-1912 (Reissue 1984). Hagebush and Schwasinger then attempted to bring their case within the ambit of *Neb. Rev. Stat.* § 25-2001 (Reissue 1979) and filed a Motion to Set Aside and Vacate the Judgment on the grounds of fraud and irregularities. District Court Judge Buckley determined that no such fraud had occurred and overruled that motion. Hagebush and Schwasinger appeal to the Nebraska Supreme Court, but they subsequently dismissed that appeal after Judge Harry Spencer recommended that the appeal be dismissed because it was frivolous.

Hagebush and Schwasinger then filed a *second* Motion to Vacate and Set Aside the Summary Judgment of October 19, 1984, and again tried to bring themselves within the ambit of § 25-2001 by alleging irregularities and fraud on the part of the Bank. District Court Judge Paul Hickman carefully reviewed the Motion of Hagebush and Schwasinger and determined that there were no irregularities or fraud in obtaining the Judgment. Hagebush and Schwasinger again appealed to the Nebraska Supreme Court, and the *second* appeal was summarily dismissed.

Incredibly, Hagebush and Schwasinger then filed a *third* Motion to Vacate the Summary Judgment and, although no evidence whatsoever, either new or old, was presented by Hagebush and Schwasinger, they again raised the same issues that had been ruled on before. District Court Judge Paul Hickman dismissed this third motion under the Doctrine of Res Judicata, and Hagebush and Schwasinger filed their *third* appeal to the Nebraska Supreme Court. The *third* appeal was also summarily dismissed, and Hagebush and Schwasinger have now appealed to the United States Supreme Court.

According to *Neb. Rev. Stat.* § 25-1912 (Reissue 1984), a Judgment, when entered, becomes a final and binding Judgment from which an appeal has to be taken within one month or it is no longer subject to review. *Aetna Cas. & Sur. Co. v. Dickinson,* 216 Neb. 660, 345 N.W.2d 8 (1984). A court has no authority to vacate or modify a judgment after the final adjournment of the term of court at which it was rendered except for the reasons stated and within the time limited in *Neb. Rev. Stat.* § 25-2001. *State ex Rel. Birdine v. Fuller,* 216 Neb. 86, 341 N.W.2d 613 (1983), *Emry v. American Honda Motor Co., Inc.,* 214 Neb. 435, 334 N.W.2d 786, 792 (1983).

Hagebush and Schwasinger attempted several times to bring themselves within the provisions of § 25-2001, which provides:

> A District Court shall have power to vacate or modify its own judgments or orders after the term at which such judgments or orders were made. . . (3) for a mistake, neglect, or omission of the clerk, or irregularity in obtaining a judgment or order; (4) for fraud practiced by the successful party in obtaining the judgment or order; . . .

As District Court Judge Paul Hickman aptly stated in his Order dated June 12, 1985, the statute does *not* say "any" irregularity, but only "irregularity in obtaining the judgment or order." Hagebush and Schwasinger have raised as an irregularity the fact that the Bank styled itself a Nebraska Banking Corporation in the caption of its Petition when in fact it was a national banking corporation. While this may have been an inadvertent and harmless error, it is obviously not the type of irregularity which justifies the setting aside of a perfectly valid judgment.

The allegations regarding the Bank's affidavits are also completely without merit. The original affidavit of G. J. Dyckes clearly indicates that he crossed out and initialed the statement that he was a shareholder in Dyckes Plastic Group. Counsel for Hagebush and Schwasinger had an opportunity to examine the affidavit at the hearing for Summary Judgment, and furthermore, had several more opportunities to examine that affidavit when the Bill of Exceptions was prepared for the first appeal. Judgments after term cannot be set aside because of a party's own inadvertence or neglect. *See, Neb. Rev. Stat.* § 25-2001; *Aetna Casualty & Surety Co. v. Dickinson,* 216 Neb. 660, 345 N.W.2d 8 (1984). Also, their allegation has not the slightest bearing on the merits of the summary judgment.

The allegation that Vance Peters was not the General Manager of Dyckes Plastic Group is also without merit. A review of the correspondence between Hagebush and Schwasinger and Vance Peters which is attached to Vance Peters' Affidavit shows that this allegation is simply untrue.

Hagebush and Schwasinger submitted no evidence to support their last Motion to Set Aside the Judgment. They apparently still relied on pleadings and documents already scrutinized by the Nebraska District Court in prior hearings. The Nebraska Supreme Court, in reviewing the *third* appeal, decided that the decision of District Court Judge Paul Hickman on October 24, 1986 was clearly a correct decision. The Nebraska Supreme Court refused to set aside the Judgment of the District Court unless the decision was clearly wrong and not supported by evidence. *See, Miller Chemical Company, Inc. v. Tams,* 211 Neb. 837, 320 N.W.2d 759 (1982).

Hagebush and Schwasinger have conceded that they owed the money to the Bank. During this litigation, however, they have continued to comb the pleadings, affidavits, and other materials in this case searching for alleged "irregularities" in an attempt to have the summary judgment set aside. *Hagebush and Schwasinger have not offered the slightest defense to the actual merits of the case though.* That is because they have no defense.

Nebraska case law provides that only when a judgment is *clearly* shown to have been obtained by fraud or false testimony, and only when it would be against good conscience to enforce the judgment, will a judgment be vacated after term. *Lincoln County v. Provident Loan & Investment Co.,* 147 Neb. 169, 22 N.W.2d 609 (1946). As all of the Courts below have concluded, there is no legal basis for setting aside the summary judgment that was

entered on October 19, 1984. Hagebush and Schwasinger have had their day in court, and the Bank is entitled to retain the judgment. *See, Sargent Feed & Grain Co. v. Anderson,* 216 Neb. 421, 334 N.W.2d 59 (1984).

———o———

CONCLUSION

The judgment below may not be set aside in the absence of sound legal reason for doing so. Hagebush and Schwasinger have offered absolutely no defense to the merits of the case. They have not shown in any way that the judgment was obtained by fraud or false testimony. There is no federal question involved in this litigation.

The judgment, when entered, became a final and binding judgment one month after it was entered and is no longer subject to review.

This case, and particularly this appeal, clearly establishes how some litigants may "play games" with the courts. The "issues" in this case have not only been before the state court repeatedly, but they have also been submitted to the United States District Court twice and once to the Eighth Circuit Court of Appeals. We are now before the United States Supreme Court on an appeal of an untimely Motion to Vacate and Set Aside the Summary Judgment.

A repetition of actions in which the same issues are raised over and over should not be tolerated. Such a tactic breeds disrespect for law and unnecessarily adds to the caseload of an already overburdened judicial system.

For the foregoing reasons, we request that the appeal be dismissed.

DATED this 11th day of August, 1987.

Respectfully submitted:

FIRST NATIONAL BANK OF OMAHA
Respondent-Appellee,

By: /s/ GERALDINE L. CLANTON
GERALDINE L. CLANTON

For: SCHMID, MOONEY & FREDERICK, P.C.
1800 First National Center
Omaha, Nebraska 68102
(402) 341-7100

Attorneys for Respondent

APPENDIX

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

FIRST NATIONAL BANK OF OMAHA, A Nebraska Banking Corporation,	)	DOC. 831 NO. 565
Plaintiff,	)	
vs.	)	ORDER GRANTING SUMMARY JUDGMENT
GARY R. HAGEBUSH and ROY E. SCHWASINGER,	)	
Defendants.	)	

This matter came on to be heard on the 9th day of October 1984, on the motion of plaintiff, First National Bank of Omaha, for an order granting summary judgment against defendants, and each of them, on the ground that there is no genuine issue as to any material fact in this action and that plaintiff is entitled to judgment in its favor as a matter of law. Plaintiff appeared by its attorney, Geraldine L. Clanton, and defendants, Gary R. Hagebush and Roy E. Schwasinger, appeared by their attorney, Frank E. Robak, Sr. The Court having heard the arguments of counsel and having considered all the files, records, affidavits and all other papers and documents filed by the parties herein, and being duly advised in the premises.

IT IS HEREBY ORDERED that the motion of plaintiff, First National Bank of Omaha, for summary judgment against defendants, and each of them, be, and hereby

is, granted, and that summary judgment in the amount of $14,174.83, together with post-judgment interest, costs and disbursements of this action, be entered in favor of plaintiff, First National Bank of Omaha, and against defendants, Gary R. Hagebush and Roy E. Schwasinger, and each of them.

Dated this 19th day of October, 1984.

/s/ James A. Buckley
District Court Judge

IN THE SUPREME COURT OF THE STATE OF NEBRASKA

FIRST NATIONAL BANK OF OMAHA, A Nebraska Banking Corporation,	)	NO. 85-156
Appellee,	)	REPORT OF PREHEARING CONFERENCE OFFICER (Filed March 18, 1985)
v.	)	
GARY R. HAGEBUSH,	)	
Appellant.	)	

This is an appeal from Douglas County from the denial of a Motion for set aside and vacate a judgment. The Honorable James A. Buckley was the presiding judge.

This was an action on a promissory note given to the First National Bank of Omaha which is a national bank but was described in the pleadings as a Nebraska Banking Corporation. Summary Judgment was rendered against the appellants and each of them on October 19, 1984. They

did not file a motion for a new trial within the time limited or attempt to appeal the judgment within the 30-day period. Rather, the appellants filed a motion to set aside and vacate the judgment, under 2502001 R.R.S. 1943. They claim relied under "(3) for mistake, neglect or omission of the clerk, or irregularity in obtaining a judgment order; and (4) for fraud practice by the successful party in obtaining the judgment or order;"

Appellants are premising this appeal on the following contentions:

1. A motion for leave to amend the defendants' answer was sustained and at the same hearing, the Court immediately began to consider and subsequently granted the plaintiffs motion for summary judgment before the defendants were fully allowed to plead their answer.

2. That by falsely alleging itself to be a Nebraska Banking Corporation and suing under that premise, the appellee committed fraud which gives the appellants proper grounds to vacate and set aside the judgment pursuant to Section 25-2001.

The attorney for the appellants conceded his clients owed the money on the notes and would probably be held liable in another action.

By inadvertence, the action was filed by the First National Bank of Omaha as a Nebraska Banking Corporation rather than as a National Banking Corportion doing business in the State of Nebraska. However, the case proceeded to summary judgment without objection. There is no question the appellants knew they were being sued by

the instiutution to which they had given the note, that the note was due and the First National Bank was still the owner and holder of it.

In my judgment, there was no fraud or irregularity sufficient to bring this case within the ambit of Sec. 25-2001. Therefore, as the appellants failed to file a motion for a new trial or to appeal within 30 days from the rendition of the summary judgment, it has now become absolute. It is my recommendation this is a frivolous appeal and it should be dismissed.

In the event the Court permits the appeal to continue I have fixed the date for the filing of the bill of exceptions for April 23, 1985. I advised Mr. Robak, attorney for the appellants, it was his responsibility to notify the Court reporter. I have fixed the date for the filing of appellant's brief for May 23, 1985. I advised the attorneys for the parties, if this case went to oral argument I would not recommend more than 10 minutes to a side.

It is my recommendation this case be dismissed for the reason set out above. If it is not dismissed, it is my recommendation the oral arguments not exceed 10 minutes to a side.

Respectfully submitted,

/s/ Harry A. Spencer
Conference Officer

IN THE DISTRICT COURT OF
DOUGLAS COUNTY, NEBRASKA

FIRST NATIONAL BANK OF OMAHA, A Nebraska Banking Corporation,	)	DOC. 831 NO. 565
Plaintiff,	)	
vs.	)	ORDER
GARY R. HAGEBUSH and ROY E. SCHWASINGER,	)	
Defendants.	)	

Hearing was held on Defendant Hagebush's Application to Set Aside Sheriff's Sale on June 11, 1985. Plaintiff appeared by Counsel Geraldine Clanton. Defendant Hagebush appeared by Counsel Frank Robak, Sr. Defendant Hagebush adduced no evidence. Plaintiff offered, and the Court received, Exhibit No. 1 (Affidavit of Geraldine L. Clanton). Arguments were made and the Court took the motion under advisement.

The Court now finds, based on the evidence, that on January 9, 1985 plaintiff's counsel by letter sent certified mail to Defendant Hagebush outlining to said defendant the homestead exemption procedure available to the defendant, but that after being notified twice of said letter, the defendant refused to take delivery of the letter. That a copy of said letter was delivered to defendant's attorney.

The Court further finds that plaintiff's Motion for Confirmation of Sale and Other Relief filed December 20, 1984 was allowed to be withdrawn by the plaintiff by the Court on January 2, 1985. The plaintiff's Further Motion

for Confirmation of Sale and Other Relief was filed on January 28, 1985 and the hearing was held on February 19, 1985. Substantially more than ten days had passed since the mailing of the letter to defendant on January 9, 1985 advising defendant of the homestead procedure. The fact that the letter of January 9, 1985 was mailed to defendant prior to the filing of the second motion to confirm the sale is of little moment, as plaintiff attempted to comply with Section 25-1531, R.R.S. 1943 (1984 Cum.Supp.). The plaintiff's obligation was met and defendant cannot take advantage of the fact that he did not receive the letter when he refused to pick it up at the post office. To hold otherwise would be an invitation to all judgment debtors to refuse delivery of certified mail. Had plaintiff not complied with the last sentence of Section 25-1531 this Court would be constrained to set aside the sale. The Court finds that Defendant Hagebush's Application to Set Aside the Sheriff's Sale was filed on the 60th day after the confirmation of sale and was within the 60 days allowed to file said motion; however, the defendant's own action in refusing to pick up said letter of January 9, 1985, coupled with his further action on January 18, 1985 as set forth in paragraph 4 of Exhibit No. 1 and the fact that the Notice attached to the Motion to Confirm Sale and Other Relief filed January 28, 1985 contained information relative to the statutes relating to the homestead exemption, leads this Court to the conclusion that Defendant Hagebush was advised of his homestead exemption rights. Plaintiff cannot be expected to do more than was done.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that defendants' Application to Set Aside Sheriff's Sale should be, and the same hereby is, overruled.

Hearing was also held on the defendants' Motion to Set Aside and Vacate Judgment, the basis for which is under Section 25-2001:

1. Any irregularity in obtaining judgment;

2. Fraud practiced by the successful party obtaining the judgment.

Section 25-2001, R.R.S. 1943, provides:

> "A district court shall have the power to vacate or modify its own judgments or orders after the term at which said judgments or orders were made * * * (3) for a mistake, neglect, or omission of the clerk, or irregularity in obtaining a judgment or order; (4) for fraud practiced by the successful party in obtaining the judgment or order; * * *."

The Court sets out the pertinent provisions of the statute for the purpose of emphasizing that subsection (3) of the statute does not say "any" irregularity, but only "irregularity in obtaining the judgment or order."

Defendants raise as an irregularity in plaintiff's obtaining summary judgment against the defendants the fact that plaintiff alleged itself to be a Nebraska banking corporation when in fact the plaintiff is a national banking corporation. While this may be irregular and an inadvertent error on the part of plaintiff's counsel, it certainly is not the type of irregularity which would authorize this Court to set aside and vacate the judgment. See Conference Officer Harry A. Spencer's Report of Prehearing Conference Officer (Exhibit No. 6). Contrary to the allegation of paragraph 5 of defendants' motion, G. J. Dyck struck out paragraph 3 of his affidavit.

The Court has carefully reviewed the balance of defendants' motion and although defendants may have an independent action against the plaintiff for failing to follow certain instructions of the defendants in transmitting a check to Canada, no fraud by the plaintiff has been shown or proved.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that defendants' Motion to Set Aside and Vacate Judgment should be, and the same hereby is, overruled.

DATED this 12th day of June, 1985.

BY THE COURT:

/s/ (Illegible)
District Judge

Supreme Court, U.S.
FILED
AUG 14 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-95

In The

Supreme Court of the United States

October Term, 1987

GARY R. HAGEBUSH
ROY E. SCHWASINGER
Petitioners,

v.

FIRST NATIONAL BANK OF OMAHA,
A Nebraska Banking Corporation,
Respondent.

GARY R. HAGEBUSH
ROY E. SCHWASINGER
Petitioners,

v.

NEBRASKA STATE BAR ASSOCIATION,
KAY ORR, GOVERNOR,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEBRASKA

REPLY BRIEF OF PETITIONERS GARY R. HAGEBUSH — ROY E. SCHWASINGER

Gary R. Hagebush
Roy E. Schwasinger
Pro Se
6904 Oak Plaza Apt. H-1
Omaha, Nebraska 68106
(402) 393-7232

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

QUESTIONS PRESENTED

1. Can Robert T. Grimit, as a Respondent as a member of the Nebraska State Bar Association, represent the Bar as counsel?

2. Could the Nebraska Supreme Court as members of the Nebraska State Bar Association dismiss an action against the Nebraska State Bar Association and Governor having been appointed by the Governor of the State, and does this create a conflict of interest and violate the Code of Professional Conduct?

3. Under Federal Question Jurisdiction, 28 USCS 1331, does the federal or state courts have jurisdiction over the Nebraska State Bar Association, a non-profit corporation, whose membership resides in states other than Nebraska but its principle place of business under 28 USCS 1332 is within the state?

4. Under 28 USCS 1331, who has jurisdiction, federal or state courts, over attorneys misrepresenting instrumentalities of the federal government i.e. national banks?

5. Under 28 USCS 1346 and 28 USCS 2680 Exceptions, is a Federal Tort Claim required to be presented before initiating a cause of action since both the United States District Court for the District of Nebraska and the United States Court of Appeals for the Eighth Circuit require it, and is it a violation of Rule 13 of the Federal Rules of Civil Procedure?

6. Are United States Attorneys Staff; United States District Court Staff; United States Court of Appeals

Staff; including national banks staff; F.D.I.C. Staff covered under 28 USCS 2671?

7. Are employees of state and federal agencies required to report misconduct known to them to be violations of law?

8. Who is responsible for false entires in court records, Clerk of Court, Court Administrative, Judge or attorneys?

9. Are persons who serve papers responsible for the errors in service and should have they investigated errors before service?

10. Are banks and courts covered under the Uniform Deceptive Trade Practices Act for misrepresenting the charter, extent, volume or nature of their business?

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No. 87-95

In The

Supreme Court of the United States

October Term, 1987

GARY R. HAGEBUSH
ROY E. SCHWASINGER

Petitioners,

v.

FIRST NATIONAL BANK OF OMAHA,
A Nebraska Banking Corporation,

Respondent.

GARY R. HAGEBUSH
ROY E. SCHWASINGER

Petitioners,

v.

NEBRASKA STATE BAR ASSOCIATION,
KAY ORR, GOVERNOR,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEBRASKA

REPLY BRIEF OF PETITIONERS GARY R. HAGEBUSH — ROY E. SCHWASINGER

Petitioners, Gary R. Hagebush and Roy E. Schwasinger, respectfully request this Court to grant the Petition for a Writ of Certiorari to review the Judgment of the Nebraska Supreme Court and the Opinion of the United States Court of Appeals for the Eighth Circuit.

OPINION BELOW

The relevant opinions of the Nebraska Supreme Court and the United States Court of Appeals for the Eighth Circuit appears in the appendix of the original document filed July 9 and docketed July 10 in this Court. See App. 1, 4 and 5.

———o———

STATEMENT OF JURISDICTION

Jurisdiction of the Supreme Court is granted under United States Constitution Article III, Sections 1 and 2. Sections 1251 et seq. of Title 28.

Articles I and VI of the United States Constitution.

U. S. Sup. Ct. Rule 17 U.S.C.A.

National Bank Act.

Uniform Commercial Code.

Uniform Deceptive Trade Practice Act.

Federal Tort Claims Act.

Electronic Fund Transfer Act.

———o———

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article III of the United States Constitution establishes the Supreme Court and inferior courts and judicial department.

Article VI states Pledge of national and state officials to uphold a Constitution.

Nebraska Revised Statute Sec. 8-114 requires all banks to be incorporated to conduct business in the state.

Federal Tort Claims Act grants damages for misrepresentation.

The decisions of the United States Supreme Court are ultimate and paramount authority as to the powers and liabilities of National Banks (*Hansford v. National Bank of Tifton,* 73 S.E. 405, 10 Ga. App. 270 (1912)).

Citizens' Nat. Bank of Stamford v. Stevenson, Tex. Com. App., 231 S.W. 364 (1921).

National Bank Act.

STATEMENT OF THE CASE

Members of the Nebraska State Bar Association failed to comply with provisions of the National Bank Act, Federal Tort Claims Act, Uniform Commercial Code, Uniform Deceptive Trade Practices Act, Electronic Fund Transfer Act, and the Nebraska Bank Act. The Nebraska State Bar Association failed to investigate, prosecute or to take any disciplinary action against its members for failure to enforce state and federal laws concerning the transfer of funds, ownership of Canadian and American Patents, grant damages, produce documents alleged to have been in existence by its members, grant deductions for business expenses, including violations of their Oath and Rule 5 of

the Local Rules of the United States District Court for the District of Nebraska.

Members of the Association placed into both federal and state courts documents concerning the existence of a corporation which cannot be located in the state and granted it judgment.

The Nebraska State Bar Association is now opposing the granting of a Writ of Certiorari, placed into the Court by a member of the association who is a respondent in this action the same as they did in the Nebraska Supreme Court, and that court failed to determine if this could be done. See App. 1.

The United States Supreme Court has ultimate and paramount authority as to the powers and liabilities of national banks, and special and important reasons within Rule 17 of this Court relating to granting of certiorari and relating to problems reaching constitutional dimensions in this case exists.

Governor Kay Orr, through attorneys licensed by the state and members of the Nebraska State Bar Association, alleges that the Governor has no jurisdiction over the bank and that it is a national banking association, however, no proof has been placed into this Court proving the allegation, however, national banking associations are deemed citizens of states in which they reside, but did not place this allegation into the Lancaster County District Court, but did state that she demurred the Writ of Mandamus. Governor Kay Orr failed to enforce Nebraska Revised Statute Sec. 8-114, and by Oath as Governor alleged to do. The Nebraska Supreme Court as members of the Nebraska State Bar Association and as appointees by the Governor,

failed to enforce state law and failed to answer any question concerning the case, being members of the Nebraska State Bar Association as defendants in the case under Nebraska Revised Statute Sec. 26. Members of the Nebraska Supreme Court violated their Oath to enforce the laws of the state and the Constitution of the United States and should have been removed from office by the Nebraska State Bar Association.

Briefs in opposition of Respondents, the Nebraska State Bar Association and Kay Orr, Governor, should be denied for failure of Respondents to properly document their objections through allegations, and Writ should be granted.

———o———

SUMMARY OF THE ARGUMENT

The Respondent, Nebraska State Bar Association, has failed to provide Petitioners any documentation concerning First National Bank of Omaha, A Nebraska Banking Corporation as to the date of termination of Charter 209, state charter, registration, corporation papers, or any letters granting the Nebraska Department of Banking jurisdiction over the Bank as a state chartered bank. Federal and State Courts have made fraudulent entries in the records made by members of the Nebraska State Bar Association and all staffs of the courts should have investigated irregularities concerning misrepresentation involving misapplication of funds, ownership of United States Patents, fraudulent charges for services not done, failure to grant deductions of business expenses granted under the Internal Revenue Act, failure to produce records

alleged to have been in existence, and alleging by opposing the grant of this Writ of Certiorari that the case does not involve federal questions since the Nebraska Supreme Court would not rule on Motion for Determination if Appellees Counsel can represent Appellees before Court having been a defendant in the case. See App. 1.

I. The decisions of the United States Supreme Court are ultimate and paramount authority as to the powers and liabilities of national banks. Hansford v. National Bank of Tifton, 73 S.E. 405, 10 Ga. App. 270 (1912).

Contrary to the Brief in opposition of Respondent, Nebraska State Bar Association, Petitioners have presented a Federal Question in CV 85-0-96, CV 86-0-192 in the United States District Court, No. 85-1726 in the United States Court of Appeals for the Eighth Circuit, and in No. 831-565 in the Douglas County District Court, No. 86-1016 in the Nebraska Supreme Court, and on page 5 of Respondents Brief, Robert T. Grimit has misled this Court and is also a Respondent as a member of the Nebraska State Bar Association.

This Court is therefore the ultimate and paramount authority as to the liability of First National Bank of Omaha, and agents of said institution for misrepresentation found in the Federal Tort Claims Act.

II. Respondent failed to investigate allegations of misconduct, false entries into bank records, court records, income tax forms filed by members, failure to grant business deductions granted under the Internal Revenue Act regarding Co. and Corporation expenses.

Members of the Nebraska State Bar Association failed to order the production of records, grant business deduc-

tions, and have entered into the bank and court records fraudulent affidavits concerning the ownership, business, volume and misrepresentation of ownership of patents, a violation of the Uniform Commercial Code, use of due care; a violation of the National Bank Act, Uniform Deceptive Practice Act, and Electronic Fund Transfer Act.

III. A Motion for dismissal was placed before the Douglas County District Court and was overruled by Judge James Buckley, however counterclaim was granted. See App. 2.

Federal decisions are controlling in dealing with national bank. *Wray v. Citizens' Nat. Bank of Dublin,* Tex. Com. App. 1929, 288 S.W. 171; *Citizens' Nat. Bank of Stamford v. Stevenson,* Tex. Com. App. 1921, 231 S.W. 364.

Douglas County District Court cannot assume jurisdiction of a national bank, judgment should have been vacated and case moved to the United States District Court contrary to Judge James Buckley's decision to overrule motion to dismiss, and the Nebraska State Bar Association should be held accountable for the decisions of the United States District Court for the District of Nebraska and the opinions and judgments from the Douglas County District Court, including the Nebraska Supreme Court.

IV. Under Rule 17 of this Court, special and important reasons relating to problems regarding issues involved reach constitutional dimensions.

Rice v. Sioux City Memorial Park Cemetery, Iowa 1955, 75 S. Ct. 614, 349 U.S. 70, 99 L. Ed. 897 (1955)

Can a national bank obtain jurisdiction in a state court and obtain judgment through the use of fraudulent documents?

Respondent, Kay Orr, Governor, through counsel as members of the Nebraska State Bar Association, alleged to this Court that the Bank is now a National Banking Association, however producing no letters, affidavits or other evidence to this Court and has failed to produce any documents that the bank was not converted to a state chartered financial institution by the Comptroller of the Currency. All Attorneys and Judges were licensed by the State of Nebraska and as the Chief Executive Officer of the State should have taken action against bank for alleged misrepresentation, since the First National Bank of Omaha, A Nebraska Banking Corporation told the United States District Court, that it lacked jurisdiction, and has represented itself as a state chartered financial institution to citizens of Canada and Australia of which Water Conservation Systems Co. has conducted business and has been unable to deduct for tax purposes expenses incurred, both federal and state, and if this Bank was not a state chartered financial institution, why has the Attorney General of the State taken so long to admit misrepresentation by members of the Nebraska State Bar Association? The I.R.S. has harrassed owners of Water Conservation Systems Inc. in which no business could be conducted because of the problems in which the United States Attorney and his staff has taken no action to prosecute under 18 U.S.C.A. 656 and has allowed the First National Bank of Omaha to continue operating as a state chartered financial institution even after the information had been turned over to them through the F.B.I. and agents of the F.B.I. and the attorneys in the United States Attorneys Office including the Federal Judges are all members of the Nebraska State Bar Association. Governor Kay Orr, has

failed to enforce Nebraska Revised Statute Sec. 8-114, and by oath alleged to uphold the laws of the State of Nebraska and the Constitution of the United States and should be held accountable for her inability to enforce state laws including the Nebraska Bank Act. The Attorney General of the State should have requested her resignation and/or prosecuted her for misrepresentation.

Failure to grant Writ of Certiorari would determine that the Constitution of the United States has no legal implications to elected, appointed or selected persons as employees of federal agencies covered under the Federal Tort Claims Act, and that members of the courts can misrepresent to any court any case without penalty, and that national banks are not required to obey federal laws, and no court has jurisdiction over them, as the courts have alleged.

CONCLUSION

For each of the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Gary R. Hagebush
Roy E. Schwasinger
Pro Se
6904 Oak Plaza Apt. H-1
Omaha, Nebraska 68106
402/393-7232
Petitioners

APPENDIX

IN THE SUPREME COURT OF NEBRASKA

WATER CONSERVATION SYSTEMS CO,	)	
	)	Case No. 87-337
Appellant,	)	
	)	MOTION FOR
v.	)	DETERMINATION IF
	)	APPELLES COUNSEL
NEBRASKA STATE BAR ASSOCIATION;	)	CAN REPRESENT
KAY ORR, GOVERNOR,	)	APPELLEES
	)	BEFORE COURT.
Appellees.	)	

COMES NOW the Appellant, Water Conservation Systems Co., and requests a determination by this Court if Appellees counsel can represent Appellees, by virtue of them being defendants in this case as members of the Nebraska State Bar Association.

The factual basis and legal authorities relied upon by appellant is Nebraska Revised Statute Sec. 7-102 and Sec. 7-106 including the Code of Professional Conduct.

WATER CONSERVATION SYSTEMS CO.
Appellant

/s/ Gary R. Hagebush

By: /s/ Roy E. Schwasinger
6904 Oak Plaza
Omaha, Nebraska 68106
Telephone: (402) 393-7232

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion has been served upon the attorneys of record by mailing said copy to Robert Grimit, 1200 American Charter Center, Lincoln, Nebraska, 68508 and Jill Schroeder, 2115 State Capitol, Lincoln, NE. 68509-4906, by first class mail, postage prepaid, on this 11 day of June, 1987.

/s/ Roy E. Schwasinger
Roy E. Schwasinger

IN THE DISTRICT COURT OF
DOUGLAS COUNTY, NEBRASKA

FIRST NATIONAL BANK OF OMAHA, A Nebraska Banking Corporation, Plaintiff,	) DOC. 831	NO. 565
vs.	) ANSWER	
GARY R. HAGEBUSH and ROY E. SCHWASINGER, Defendants.	) (Filed October 11, 1983)	

COME NOW the Defendants, Gary R. Hagebush and Roy E. Schwasinger, and each of them, and for their Answer to Plaintiff's Petition filed herein admit, deny, and allege as follows:

These Defendants, and each of them, deny each and every allegation contained in Plaintiff's First Cause of Action and Second Cause of Action set forth in its Petition filed herein, except those allegations which constitute admission against Plaintiff's interests.

WHEREFORE, Defendants having fully answered Plaintiff's Petition filed herein, prays that said Petition be dismissed with prejudice, at Plaintiff's cost, and further prays for such other relief which the Court deems just and equitable in the premises.

GARY R. HAGEBUSH and
ROY E. SCHWASINGER, Defendants

By /s/ Edna R. Atkins
Attorney #10134
1823 Harney Street, Suite 1002
Omaha, Nebraska 68102
(402) 346-6335